United States Court of Appeals

for the Second Circuit

APPENDIX

74-1667

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket 74-1667

FAIRMONT SHIPPING CORP. and FAIRWINDS OCEAN CARRIERS CORP., Owners of the Steamship WESTERN EAGLE,

Plaintiffs-Appellees,

—against—

CHEVRON INTERNATIONAL OIL COMPANY, INC.,

Defendant-Appellant.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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September 2, 1970	Filed Amended Complaint
October 28, 1970	Filed Answer to Amended Complaint
October 28, 1970	Filed Interrogatories
January 13, 1971	Filed Pltffs. Answers to Interrogs.
October 29, 1973	Trial begun and concluded before MacMahon J. without a jury, decision reserved
November 30, 1973	Filed record of proceedings-transcript-dated Oct. 29, 1973
December 14, 1973	Filed Stip. and order that pltffs. were the owners of the Western Eagle. Stip. is without prejudice to any other defenses or contentions raised by deft. As to deficiencies of proof in pltf. case. MacMahon, J.
March 11, 1974	Filed Opinion #40,443 - Accordingly, we find deft. is liable to pltffs. for breach of its warranty of workmanlike service and/or any foreseeable damages suffered by the Western Eagle caused by that breach. A Special Master will be appointed,pursuant to Rule 53(a), Fed. R. Civ. P., to determine damages. The parties are directed to submit an order, not inconsistent with this opinion, within 10 days, the foregoing constitutes this court's findings of fact and conclusions of law - So ordered - MacMahon, J.
March 21, 1974	Filed Interlocutory decree - that pltffs. recover of and from deft. Chevron Intl. Oil Co., Inc., the damages by pltffs.,together with interest and with costs to pltff. - issues re: damages and interest are referred to James B. Kilsheimer,III, Esq., 122 E. 42d St., N.Y., N.Y. 10017, as Special Master, to determine and report - that the reference to the Special Master is stayed 30 days to

Date Filed	
	give parties an opportunity to reach agreement as to the amount of damages and interest. - in the event parties reach agreement re: damages and interest to be awarded, the parties shall submit a stip. & order to the court setting forth their agreement and vacating this reference to a Special Master - MacMahon, J. - mailed notice
April 5, 1974	Filed notice of appeal by deft. from an interlocutory Judgment entered on March 21, 1974 upon the Opinion and Decision of Judge MacMahon dtd. March 8 (entered on the docket on the 11th day of March), granting judgment in favor of the pltffs. m/n
May 15, 1974	Filed Designation of Exhibits to be Transmitted to USCA
May 15, 1974	Filed Order to Change Atty from D'AMATO, COSTELLO & SHEA to HAIGHT GARDNER POOR & HAVENS - So ordered, MacMahon, J. - entered 5-15-74.

Plaintiffs' Amended Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

FAIRMONT SHIPPING CORP. and FAIR-WINDS OCEAN CARRIERS CORP., Owners of the Steamship WESTERN EAGLE,

Plaintiffs,

-against-

CHEVRON INTERNATIONAL OIL COMPANY, INC.,

Defendant.

AMENDED COMPLAINT

70 Civ. 3382

- x

Plaintiffs, by Burlingham Underwood Wright White & Lord, its attorneys, for its amended complaint against defendant, alleges upon information and belief, as follows:

FIRST: At all times hereinafter mentioned, plaintiffs were and are Liberian corporations with offices in Monrovia, Liberia, and owners of the steamship WESTERN EAGLE, which, prior to the stranding of the vessel on December 14, 1969, was tight, staunch, strong, properly manned and equipped and in all respects seaworthy.

SECOND: At all times hereinafter, defendant was and is a corporation with a place of business at 245 Park Avenue, New York, New York.

THIRD: This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

FOURTH: On or about December 8, 1969, plaintiffs entered into a contract with defendant by its agent, Norland Shipping & Trading Corporation, whereby plaintiffs agreed to purchase bunker "c" fuel oil at the port of Flushing, Holland, for the steamship WESTERN EAGLE at a price certain per ton,

including pilotage, harbor dues, clearance, quay hire, mooring, unmooring and ordinary tug assistance.

FIFTH: On or about December 14, 1969, the WESTERN EAGLE entered the port of Flushing with a pilot and tugs furnished by defendant to move and assist the vessel to defendant's bunkering berth. In the course of maneuvering the vessel to the bunkering berth, the pilot and tugs caused and allowed the WESTERN EAGLE to strand on rocky bottom outside of the navigating channel causing severe damage to the vessel.

SIXTH: The aforesaid stranding and consequent damages were not caused or contributed to by any fault or neglect on the part of plaintiffs or of the WESTERN EAGLE, her master, or employees of her owners, but were due solely to the fault and negligence of defendant, and those employed by defendant to pilot and assist the WESTERN EAGLE to defendant's bunkering dock.

SEVENTH: By reason of the premises, plaintiffs have sustained damages in the sum of about $200,000 as nearly as may now be estimated, no part of which has been paid although duly demanded.

EIGHTH: All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, plaintiffs demand judgment against defendant in the sum of $200,000, together with interest, costs and disbursements of this action.

Dated: New York, N. Y.
August 31, 1970

BURLINGHAM UNDERWOOD WRIGHT WHITE & LORD

By _____
A Member of the Firm
Attorneys for Plaintiffs
Office and P.O. Address
25 Broadway
New York, N. Y. 10004
422-7585

Defendant's Answer to the Amended Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FAIRMONT SHIPPING CORP. and FAIRWINDS OCEAN CARRIERS CORP., Owners of the Steamship WESTERN EAGLE,

Plaintiffs,

-against-

CHEVRON INTERNATIONAL OIL COMPANY, INC.,

Defendant.

ANSWER

70 Civil 3382

The defendant, CHEVRON INTERNATIONAL OIL COMPANY, INC., as and for its Answer to the Amended Complaint of the plaintiffs, FAIRMONT SHIPPING CORP. and FAIRWINDS OCEAN CARRIERS, CORP., by and through its' attorneys, BAKER, NELSON, WILLIAMS & MITCHELL, alleges upon information and belief as follows:

1. Denies any knowledge or information sufficient to form a belief with respect to each and every allegation contained in paragraph "FIRST" of the plaintiffs' Amended Complaint.

2. Admits that on or about December 8, 1969, defendant entered into a contract with NORLAND SHIPPING AND TRADING CORP., and except as so admitted, denies each and every allegation in paragraph "FOURTH" of the plaintiffs' Amended Complaint, and begs leave upon the trial of this action to leave all questions of law for determination by this Honorable Court.

3. Denies that the defendant furnished the WESTERN EAGLE with a pilot and tugs and denies that the defendant maintained a bunkering berth and except as so denied, denies any

knowledge or information sufficient to form a belief, each and every allegation paragraph "FIFTH" of plaintiffs' Amended Complaint.

4. Denies each and every allegation contained in paragraphs "SIXTH" and "SEVENTH" of plaintiffs' Amended Complaint.

AS AND FOR A FIRST COMPLETE AND/OR PARTIAL DEFENSE TO THE PLAINTIFFS' AMENDED COMPLAINT THE DEFENDANT CHEVRON INTERNATIONAL OIL COMPANY, INC. ALLEGES:

A. That if the plaintiffs' vessel the S.S. WESTERN EAGLE stranded in the Channel at the Port of Flushing, Holland, on or about December 14, 1969, as alleged in the Amended Complaint, which allegations the defendant strongly denies, then such stranding will have been caused solely by the negligence, wrongdoing, and/or inadvertence of the plaintiffs and/or their agents, servants and employees and by reason of the foregoing, no liability exists against the defendant.

AS AND FOR A SECOND COMPLETE AND/OR PARTIAL DEFENSE TO THE PLAINTIFFS' AMENDED COMPLAINT THE DEFENDANT CHEVRON INTERNATIONAL OIL COMPANY, INC. ALLEGES:

B. That if the plaintiffs' vessel the S.S. WESTERN EAGLE stranded in the Channel at the Port of Flushing, Holland, on or about December 14, 1969, as alleged in the Amended Complaint, which allegations the defendant strongly denies, the plaintiffs are not entitled to commence suit against the defendant by reason of the applicable maritime laws in existence at or about the time the alleged stranding, including but not

limited to, The Netherlands' Towage Conditions of 1951.

WHEREFORE, in view of the foregoing, it is respectfully prayed that the plaintiffs FAIRMONT SHIPPING CORP. and FAIRWINDS OCEAN CARRIERS CORP. Amended Complaint be dismissed as a matter of law with prejudice and that the defendant CHEVRON INTERNATIONAL OIL COMPANY, INC. be awarded costs and disbursements and reasonable attorney's fees.

Dated: New York, New York
October 27, 1970

BAKER, NELSON, WILLIAMS & MITCHELL

By

ROBERT E. MESHEL

A Member of the Firm

Attorneys for Defendant
Office and Post Office Address
20 Exchange Place
New York, N.Y. 10005
WHitehall 4-5800

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

FAIRMONT SHIPPING CORP.,

Plaintiff,

-against-

70 Civ. 3382

CHEVRON INTERNATIONAL CO., INC.,

Defendant.

----------X

Before:

HON. LLOYD F. MAC MAHON,

District Judge

New York, N. Y.
October 29, 1973 - 11 a.m.

APPEARANCES:

BURLINGHAM, UNDERWOOD, WRIGHT, WHITE & LORD, ESQS.,
Attorneys for plaintiff,
JOSEPH C. SMITH, ESQ., Of Counsel

ROBERT E. MESHEL, ESQ.,
Attorney for defendant.

(Case called; both sides ready.)

THE COURT: All right. Proceed. I would like brief opening statements.

MR. SMITH: Your Honor, this is a case in contract and tort where the plaintiff contracted with Chevron International for bunkers and part of the contract was that Chevron would furnish tugs and pilotage at Flushing, Holland, when the vessel went into bunker. That was the sole purpose for the vessel going in, for bunkering.

In the course of going in the tugs failed to take the lines of the vessel and due to the strong current and wind at the time the vessel became unmaneuverable and grounded on a dike close to the entrance to the port.

Those briefly are the facts that we are dealing with in the case, your Honor.

THE COURT: All right. If I understand you, there was no contact between the vessel and the tug at all.

MR. SMITH: No contact at all.

MR. MESHEL: If the Court pleases, the defendant in this case takes the position that SHV, which is a separate Dutch company, if anybody, if there was a fault, was responsible.

What happened was that in this bunker contemplation it was clearly indicated that SHV was to supply the fuel to

this vessel. It was clearly indicated that SHV tugs were available if requested. Apparently the pilot and the master decided to call for tugs too late. By the time the tugs arrived on the scene the vessel was already in a perilous condition.

The tugs at no time ever put a rope on that vessel. Before they could do so that vessel was aground. This master brought his vessel in in dense fog. For whatever reasons, I don't know. He attempted to maneuver his vessel in the roads of Flushing. For whatever reasons, I don't know. There are indications that his radar was at best cluttered.

So that in essence he was navigating his vessel in fog, in the dark, with the only eyes being a cluttered radar, and he ran aground, and now for some reason they are coming after Chevron, I guess under the deep pocket theory, claiming that somehow we are responsible. We deny any responsibility and in addition we say, as an alternative argument, we say even if we were responsible, somehow vicariously, for the fault of SHV or for the Dutch pilot, that there was no fault on the part of the tugs and/or the pilot.

The reason why this vessel stranded was because the vessel's master attempted to navigate the vessel in fog, in the dark, without waiting for tugs, without anchoring. For that reason we deny liability.

THE COURT: All right. Proceed.

MR. SMITH: Your Honor, I would like to call as our first witness Mr. Franz P. K. Werner, who was the bunker broker at the time the contract was made.

F R A N Z P. K. W E R N E R, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q By whom were you employed in December 1969, Mr. Werner?

A By C. D. Mallory, Inc.

Q Do you have any personal knowledge of a bunker transaction between Norland Shipping & Trading Corporation, agent for the S. S. WESTERN EAGLE, and Chevron International Oil Company?

A Yes, I have knowledge of that. I was the contracting broker between the two parties mentioned before.

Q I have here a document which I have marked as Plaintiff's Exhibit 1 for Identification. Would you examine that, please.

A Yes. This is the contract typed up from pencil notes and this is my signature, countersigned by Mr. Pagel, the gentleman I contracted with.

THE COURT: The pertinent parts of it.

MR. SMITH: Yes, your Honor. I am not familiar with the Court's procedure.

THE COURT: However you wish to do it.

MR. SMITH: I will have my associate, Mr. John Mamoulakis, your Honor, sit in the witness chair then.

THE COURT: All right. If you will just cue your adversary to the pages as you go.

MR. SMITH: It may be helpful for the Court to have the chart which the witness marked on the deposition.

THE COURT: All right.

MR. SMITH: This is the deposition of Leonard Jean Pennarts, who was first publicly sworn before testifying. There was also an interpreter in attendance to assist Mr. Pennarts with his testimony if he didn't understand the question in English or vice-versa.

"Q Please state your full name.

"A Pennarts, Leonard Jean.

"Q What is your occupation?

"A I am a pilot from the Dutch pilot station in Flushing, a river pilot.

"Q How long have you been a pilot?

"A Now for nine years.

"Q Were you a Dutch pilot stationed at

"Pennarts 16

Flushing on December 14, 1969?

"A Yes.

"Q Do you recall piloting a vessel called the WESTERN EAGLE?

"A Yes."

Page 3:

"Q Would you tell us what happened on that date, captain?

"A Yes. I have been called in the night of 13th of December, 1969 at about 3:30, you can say.

Then I was called for the pilot boat to go to the WESTERN EAGLE. The ship was bound for the port of Flushing. When I came on board it was about 3:45, and according to my paper the engine was stopped at that time. My position was between the pilot station and the port of Flushing. The wind was southerly 5 to 6 and the ship had a bit of speed ahead. The visibility was poor, but enough that I could see the lights of the port of Flushing and the head of the pilot station where the pilot boats are waiting.

My intention was when I came on board to swing the ship starboard round into the road for making fast the tugboats, but there was one problem. There was a ship at anchor off the head south of the red light of

"Pennarts 17

the port of Flushing.

"Q Captain, I will stop you right there and I will ask you to put on the chart the position of the tanker that was anchored, if you can do that, and circle the light that you just referred to.

"A Just the position of the ship?

"Q Yes.

"A I think it was about this position. I don't know exactly, but --

"Q We will just draw a line down there. That was a tanker, was it?

"A That was a tanker, yes.

"Q It was inside of the circle that you just drew on the chart, is that correct?

"A Yes.

"MR. SMITH: I would like to have the court reporter mark this chart as Exhibit 4, please."

Your Honor, that will be Plaintiff's Exhibit 3.

THE COURT: All right. You want to call it Exhibit 3 now or shall we call it the same exhibit as at the deposition? Would that make it easier?

MR. SMITH: Yes, your Honor.

THE COURT: All right. It's 4 now.

(Plaintiff's Exhibit 4 was received in evidence.)

"Pennarts 18

MR. SMITH: (Continuing) "Q Captain, would you also circle the red light that you referred to at the entrance to the harbor?

"A The red light was this one.

"Q Circle that, please. I will just draw a leader off to the northeast and label that 'red light.' This is also on Pennarts Exhibit 4.

Would you also on this Exhibit 4 put the approximate position of the WESTERN EAGLE when you boarded, to the best of your recollection?

"A I think it must about be here.

"Q I will just draw a line off to the southwest and call that 'boarded.' Now would you continue as to what happened after that?

"A Yes. When I came on board I contacted with the VHF station Flushing radio, telling that I was boarded and bound for the port of Flushing. Then I changed the channel to 6 and I reported the tug boats to come out for making fast to the ship. I stayed on Channel 6 on the VHF after that time.

My intention was to go round the anchored ship starboard and wait in the road of Flushing for making fast the tug boats. When I was abeam of the anchored tanker, I put the engine -- I just have to look

"Pennarts 19

in the paper. It was at 3.52 the engine was put on half astern."

Page 6:

"A That is from the bell book. On my paper is standing at 3.52. Having passed the anchored tanker full astern was given at the engines."

MR. MESHEL: Can I interrupt at this point, your Honor? Shouldn't we introduce the bell book at this point, since he is referring to it, and it was marked as an exhibit before?

MR. SMITH: I have no objection to that, your Honor. Your Honor, it will be easier to skip 3 and carry on with 5 because this is 5 also.

THE COURT: Sure.

MR. SMITH: I offer that in evidence at this time.

MR. MESHEL: No objection.

(Plaintiff's Exhibit 5 was received in evidence.)

MR. SMITH: (Continuing) "Having passed the anchored tanker full astern was given at the engines and that we have been doing till 3.56. In that time the ship was swinging to port from about 90 degrees to 60 degrees.

"Q I am sorry. What time was that, Captain?

"A In the time I was running astern. I

"Pennarts 20

expected the ship to go starboard round but she was going to port. So she was heading with her head to the port of Flushing. After that I stopped the engine again and with the helm hard starboard and the engines running ahead -- I will see what is in the paper.

"Q Which paper are you referring to now, Captain? That is Exhibit 3."

Your Honor, that is a statement that the pilot made from which he refreshed his recollection and I have no need to put it in evidence at this time. If Mr. Meshel would like to have it marked as an exhibit we could mark that one as 3.

MR. MESHEL: Yes, your Honor. I believe there are two separate statements. I would like to have both marked.

THE COURT: All right.

(Plaintiff's Exhibit 3 was marked for Identification.)

MR. SMITH: (Continuing) "A At 3.58 the engine was running slow ahead and hard starboard rudder. The ship was coming starboard to about 95 degrees, but in that time I was too close to the No. 1 buoy to go further round and decided to put the engine astern again. If I should have run ahead I should have overtaken the No. 1 buoy."

Page 7:

"A And the engine was stopped, according to

the paper, at 4.05, and also to the paper full astern was rung. In that time the two tug boats were close to the ship for making fast."

Going over to 8:

"Q Continue, Captain.

"A As I said, in that time the tug boats were coming to the ship to make fast. Forward on the port side there was a heaving line already thrown.

I will have to look in the paper for the time of ships coming down the river. I was saying here 'at about the same time of making fast tugs a coaster came into sight ahead and proceeding down river.'

MR. MESHEL: You are reading now from Exhibit 3?

"A Yes, I am reading. I just told you that I was reading. 'The coaster immediately sounded three short blasts to which we replied with three short blasts. The coaster passed port to port.'

And then also from the paper, 'within a few minutes another vessel heading down river approached on the starboard bow.' That's the reason that I decided to stop the engine.

"Q Do you have an independent recollection of those two coasters coming down?

"A Yes. The tug boats that were trying to

"Pennarts 22

make fast at that time run off the ship.

"Q What do you mean by 'run off the ship'?

"A They left the ship. So for me there was nothing other left as to try to get the ship off the shore by the engines.

Then I read again in the paper, 'the other vessel, instead of passing down the starboard side, passed down the port side and went clear. This occurred about 4.10.'

"Q Now when you say passed on your port side and went clear, would that be to the north or to the south of you? Did he pass to the north or to the south of you?

"A To the north.

"Q So that would be between you --

"A And the shore.

"Q And the shore?

"A Yes. Then I read again, 'at 4:11, after the second ship had passed, I observed that the wind had set the vessel over towards the north shore and we were heading 45 degrees with Schone Waardin Light dead ahead.'

And then according to this paper at 4:12 I advised that the engine be run full ahead and that was while she was already 45 degrees and the shore was

"Pennarts 23

already ahead and my engines running astern were not helping to keep the ship from off the shore. I tried with hard starboard to get off the shore by running ahead, but I noticed very quick that that was not helping.

So I put the engine again at astern and that was, according to this paper, again, 4:12 full ahead. And I have to look in the bell book paper. 4:12 stop, 4:13 full astern. And here in the paper again, No. 3 "it was my impression that the vessel first touched the bottom at 4:15.'

"Q Where were the tugs at this time?

"A The tugs at this time were near the ship, but in the wrong position to make fast, and when I was close or on the dike on my first touch, after that the ship went alongside the dike.

"Q Could you put the approximate position of the vessel on Exhibit 4 when the tugs first came alongside before the coasters passed, approximately?

"A The first time they want to make fast?

"Q Yes.

"A That must be near No. 1 buoy.

"Q We will put a line down to the south and

call that position A.

What was the position of the vessel when she went on the dike, on the rocks?

"A She was running 45 degrees and I just was in the sector white and green. So heading ahead 45 degrees, like this.

"Q Now we will mark that with a line out to the southeast and call that position B.

Were the tugs made fast at any time between position A and B, Captain?

"A No.

"Q Did you attempt to get the ship free with the two tugs that were out there?

"A If I had made fast the tugs in time we were clear of the coaster, yes.

Well, if I had made fast the tug boat in the time we were throwing over a heaving line, in that time when the ship was fast on one place only on the bow, that was enough to swing the ship in the good direction and keep clear of the coaster.

"Q Now after the ship grounded was there any attempt made to refloat it by the two tugs that came to meet the ship when you arrived?

"A Yes. When we were grounded we made fast

"Pennarts 25

a tug forward and a tug aft and they were telling there was coming a third tug from the same company. I asked them to try to tow her off, but in a little time I saw it was not possible for two tugs, one forward and one aft, to take her off.

Then I asked the forward tug boat to go astern, to make fast astern.

"Q The ship was ultimately refloated that day by tugs from Antwerp, is that correct?

"A Well, not all the tugs were from Antwerp. The tugs of the bunker station also had the job.

"Q That would be SHV, would it?

"A SHV, yes."

This is on Mr. Meshel's cross examination, page 40:

"Q Now you say in your statement, Exhibit 3, that you had to make an alteration of course because of the No. 1 buoy, is that right?

"A Where does it say that?

"Q Page 2. Did you have to make a special course change because of the No. 1 buoy at any time?

"A Yes. If I had proceeded in the way I was going I should have overtaken the No. 1 buoy.

"Q What was your heading prior in time to coming upon the No. 1 buoy? When you were west of the No. 1 buoy what was the approximate heading of your

"Pennarts 26

vessel?

"A I said 95 degrees.

"Q And was the buoy on the starboard part of your vessel or on the port part of your vessel as you approached it from the west side?"

On page 41:

"Q Now do I take it that there was a southerly wind working against your bow?

"A Yes.

"Q Why didn't you simply make a simple 5 degree course alteration to port to get past the No. 1 buoy? Why did you find it necessary to do what you did?

"A To take out the speed and to make fast the tug boats.

"Q I take it there was a floodtide running?

"A Yes.

"Q And there was a wind which was coming from the southerly part of your vessel?

"A Yes.

"Q Did this have any effect, if at all, of pushing your vessel toward the port side of the buoy?

"A Yes.

"Q What alteration did you make?

"A I gave her full astern.

"Q When was that, what time was that?

"A 0405.

"Q After you cleared the buoy, I believe you testified that the tugs eventually appeared on the scene, is that right?

"A Just 0405 the tugs were trying to make fast.

"Q Could it have been later than that the tugs appeared on the scene, later than 0405?

"A No, I don't think so.

"Q Would you look at your statement, Captain, Exhibit 3. You say at 0405 tugs arrived. Is that right, is that what you are saying?

"A Yes.

"Q Did you give them any orders?

"A Yes. I gave them orders to make fast. Also to the crew of the ship.

"Q Was your vessel going astern at the time that you gave those orders, full astern?

"A I have to look in the papers.

"Q Would you look and see?

"A 0405 full astern.

"Q And did you expect the tugs to make fast while you were making a full astern movement?

"Pennarts 28

"A Yes.

"Q You made no sternway in five minutes?

"A No.

"Q Did she ever make any sternway?

"A I don't think so, because if she was making sternway, I was not there running on the dike.

"Q You have a floodtide running and you have a strong southerly wind and you are not making any sternway, is that your testimony?

"A Yes.

"Q Your testimony is that you never made any sternway?

"A I tried to make sternway, but if I had made sternway we were not coming so close to the dike.

"Q Was your vessel moving towards the --

"A She was still moving.

"Q Toward the shoreline from 0405 to 0410, or was she staying in the middle of the fairway?

"A 0405 I stopped the engines. Here I said-- I will just have to look in the paper. In that time, at 0405, there was a coaster coming.

"Q Now there came a time when two coasters appeared on the scene, is that correct?"

MR. MESHEL: I haven't interrupted so far, but

could we just have those last two words so we have the context? You asked a question and you never got an answer. I take it the answer is "toward the northern shore," the answer he finally gave, which way she was moving.

MR. SMITH: All right. On the top of page 45:

"Q That's right. Now can I ask you from 0405 to 0410 whether your vessel was moving toward the northern shore?

"A Yes, moving with the wind, northeast.

"Q Now there came a time when two coasters appeared on the scene, is that right?

"A Yes.

"Q And they were headed in which direction?

"A One is on the port side and the other is on the starboard side, but both went past on the port side.

"Q They were heading westerly?

"A They were heading westerly, but exact course I don't know.

"Q How long before they appeared on the scene had you seen them on the radar screen?

"A Five or ten minutes. I don't know exactly."

That's on page 46.

"Pennarts 30

Going over to the bottom of page 48:

"Q Was your full astern also given to avoid the coasters?

"A That is what I exactly don't know.

"Q You saw the coasters coming down, isn't that right?

"A Yes, but my full astern was given in the first place to avoid the No. 1 buoy.

"Q What time was that?

"A 0405.

"Q At 0410 did a coaster, the second coaster, pass your bow?"

Over on page 49:

"A You mean did the ship cross my bow?

"Q Yes, exactly.

"A I think she would pass my ship, but I stopped the engine in case I didn't know if she wanted to pass me on the starboard or on the port side.

"Q The question I asked you was, did she actually start from the starboard side and cross your bow to the port side and pass you port to port, the second coaster?

"A Yes.

"Q And that was some time around 0410?

"Pennarts 31

"A 0411.

"Q Were you concerned about a collision with the second coaster? Is that the reason you stopped your vessel?

"A Yes. I wanted to give her room.

"Q Approximately what was the closest part that that second coaster's bow came to your bow when she eventually did cross in front of you?

"A I can't guess.

"Q Approximately.

"A It was close. It was not close enough to make a collision.

"Q Would you look at your statement and see if this is accurate. Do I take it, Captain, that from the time you boarded until the time the vessel stranded at two separate times you gave full astern maneuvers, specifically 0352 to 0356 and later at 0405 to 0410, and in both instances when you gave those full astern movements your vessel's bow swung to port, is that right?

"Q Now based on your experience is it usual or unusual for a right-handed screw T-2 tanker such as the WESTERN EAGLE to swing to port when you give it a full astern maneuver?

"A No.

"Q Is it unusual?

"A It is unusual.

"Q What is the usual maneuver that a vessel of that type makes when you put it full astern, a right-handed screw?

"A Going to starboard.

"Q Were you surprised that she didn't swing to starboard rather than to port?

"A Yes, you are always surprised if she doesn't do it, but you know the reason why she is not doing it.

"Q What was the reason?

"A The wind.

"Q Now at any time prior to stranding, as you were headed in the direction of the northerly shore, the lee shore, did you ever consider putting the vessel full astern with a view to swinging the bow to port and backing away from the northern shore?

"A No. The ship is taking a position in the wind and for the rest she is not coming any more to port.

"Q Then why did you give full astern orders at 0411 and 0413, as set forth in your statement?

"A Well, 0411 I gave full astern just to try

"Pennarts

to get the ship in the river and not to be stranded."

Going over to page 54:

"Q Could you see any shore lights at the time that you first boarded the vessel?

"A Yes.

"Q They were visible to you, the shore lights?

"A The light of the Roeierschoofd and the light of the nautical -- from the port of Flushing.

MR. SMITH: He also indicated the light circled and marked 'red light' on Pennarts Exhibit 4.

MR. MESHEL: At what point in time, Captain, did you realize that your vessel was being set toward the northerly shore?

"A At what time do you mean?

"Q I take it that there came a point in time when you realized that the wind and the tide were pushing you toward the lee shore, is that right?

"A Yes.

"Q When did you first realize that in point of time?

"A That was just the time after trying to make fast those tug boats that we always set down to coast, but when we didn't manage to make fast those tug

"Pennarts 34

boats my only try was then to get off on our own power.

"Q Where were you with relation to the Schone Waardin?

"A It must be just abeam or just past No. 1 buoy.

"Q Would you indicate to me where you were on your Exhibit No. 2 by circling in red ink that area when you first realized that your vessel was being set against the lee shore?

"A In this position.

"Q Now would you circle that in red pen, please.

Was this before or after the coasters came on the scene?

"A Before. There is the maneuvering when I went to port with full astern, running full astern.

"Q So you had maneuvered your vessel to port even though you realized that your vessel was being set to the lee shore?

"A No, I didn't maneuver her to port. She was coming to port.

"Q She was coming to port?

"A Yes.

"Q What time was this?

"Pennarts 35

"A That is the time that I wanted to correct her. That was 0358 slow ahead was ordered.

"Q That was the first time?

"A That is the first time to correct her, but in combination, it is always in combination. My whole intention was to go starboard round, but after full astern she was coming port. That is the reason she was coming closer to the coaster. Then you want to correct her to go up into the road.

"Q Where is the No. 1 buoy on Exhibit No. 2?

"A Here."

We are going to run into a problem now, your Honor. We have already marked Plaintiff's Exhibit 2 and this is Pennart's Exhibit 2. I think we will have to mark it Plaintiff's Exhibit 6 now.

THE COURT: All right. It will help me if you will transpose it as you read from now on from the deposition.

MR. SMITH: Yes, your Honor.

(Plaintiff's Exhibit 6 was marked for Identification.)

THE COURT: I can't, as I look at it, relate it to Exhibit 4, the chart. Perhaps you and your adversary could transpose what is on your Exhibit 2 for

"Pennarts 36

Identification onto Exhibit 4, so we will have it all on one chart.

Let's try that. I will take a few minutes recess. See if you can agree on it.

(Recess.)

MR. MESHEL: Your Honor, we attempted to satisfy your requirements. Unfortunately, when we did it, it's really wrong. I want your Honor to be alerted to it.

MR. SMITH: It's not quite right. This should actually be moved over a little bit. This position here on the other diagram is more in this position here.

THE COURT: How in the world am I going to remember that? Can't you give me an accurate diagram of this on which you can agree or at least show me where your disagreements are, give me two ?

MR. SMITH: We tried to put it on one chart, your Honor, but it just didn't work. It's hard to scale it.

THE COURT: All right. We will limp along with this one. If I am confused that's par for the course.

MR. SMITH: (Continuing) "For the record, I think you had better mark each of those circles. We won't be able to tell which is which.

MR. MESHEL: All right. I am going to put 'buoy' on No. 1 buoy."

That was one of the markings we just put on Plaintiff's Exhibit 4, your Honor.

"The other one we will call 'first started to set.'

"Q What specific orders did you give to the tugs, if any, when they eventually arrived on the scene?

"A To make fast as quick as possible.

"Q How far from the northern coastline were you when you gave that order?

"A I just was near the No. 1 buoy.

"Q And how far were you from the northern coastline?

"A It is also approximate.

"Q How many cables?

"A 3 to 3-1/2.

"Q Did you know at the time you were aboard that vessel how many cables the No. 1 buoy was from the northern shore? Did you know that as part of your practical knowledge of the Scheldt River?

"A Yes.

"Q Were you concerned about the position of your vessel at the time that you were abeam of the No. 1 buoy?

"A No. I just based also the maneuvering of the ship to make fast the tug.

"Pennarts 38

"Q Were you concerned about the position of your vessel with regard to the northern shore at the time that you passed the No. 1 buoy?

"A If there were no tugs or if there were tugs to make fast?

"Q Were you concerned, whether there were no tugs or whether there were tugs, about being too close to the shoreline?

"A Well, if there were no tugs I would have taken another decision.

"Q What other decision would you have taken?

"A If there were no tugs and I was in this position I should have sailed up the river.

"Q And done what?

"A Just go to --

"Q No. 5 buoy?

"A Round the bend, yes.

"Q Is there a No. 5 and 5A buoy that you can turn?

"A Yes.

"Q And is that the normal way a lot of ships turn?

"A No, it is not normal. The normal way is to turn here.

"Pennarts

MR. SMITH: The witness indicated on Exhibit 4 a position between 'boarded' and 'tanker.'"

Going over to page 59:

"Q Why didn't you wait for the tugs?

"A I was in such a position that I couldn't wait over there.

"Q What prevented you from laying anchor and waiting for the tugs?

"A I was in that position I couldn't go starboard round because of the anchored ship. So first I had to pass that ship.

"Q And there came a point when you did pass it?

"A Yes."

Going over to page 61:

"Q What prevented you from making a starboard maneuver any time after you arrived at the No. 1 buoy or went beyond it?

"A The banks just past the buoy. I can't go round starboard after the No. 1 buoy."

Page 62:

"Q Was there anything beyond the banks which prevented you from making a starboard turn?

"A If I am past No. 1 buoy I have to sail up

"Pennarts 40

the river.

"Q Was there anything that prevented you from doing that?

"A Yes.

"Q What?

"A I wanted to make fast my tug boat.

"Q I take it you were now attempting to maneuver your vessel so that you were stemming the tide, isn't that right, so that you could steady your vessel?

"A I was in a certain position. The tug boats were trying to make fast and if they were fast I was out of the trouble.

"Q You said you had tried to make a starboard turn and you couldn't, isn't that right?

"A In the first time?

"Q Yes.

"A Yes.

"Q Why were you making that starboard turn? What was the purpose? Did you have a purpose in attempting to make it?

"A Yes.

"Q What was your purpose?

"A To make fast the tug boats and to keep the ship steady in the current.

"Pennarts 41

"Q To keep the ship steady in the current so that the tugs could make fast?

"A Yes.

"Q Was there anything that prevented you, once having passed the No. 1 buoy, from making a starboard turn so that you could stem the tide so that the tugs could make fast?

"A Yes. I don't like to sail after the buoys.

"Q Why not? Is there any danger?

"A At No. 5 we have more room than here.

"Q Why didn't you go and turn there if you were concerned?

"A Because the tug boats were trying to make fast.

"Q Were you attempting to make a starboard maneuver and stem the tide so they could make fast?

"A That is the normal way.

"Q And were you attempting to do that the normal way?

"A Yes."

Going over to page 65:

"Q Do you recall in your statement the fact that you said that you thought that the bow was wedged along the dike as you made a forward maneuver?

"Pennarts 42

"A First the bow and then the rest of the ship was blowing alongside."

Page 66:

"Q You made a maneuver at 0412 of full ahead, is that right?

"A Yes.

"Q And you gave it a hard starboard rudder?

"A Yes.

"Q And what happened to the ship when you gave that command? What did the ship do?

"A I don't know if she was moving starboard, but afterwards I thought it was so close to the shore that it was not any more possible to get her off in that way of maneuvering.

Page 68:

"Q Did there come a time when the whole port side of the WESTERN EAGLE was flush against the dike?

"A Yes.

"Q Is the position that you have marked on Exhibit 1" --

Your Honor, here we will have to make Pennarts Exhibit 1 Plaintiff's Exhibit 7 and I will correct it as we go along.

THE COURT: All right. Thank you.

"Pennarts 43

(Plaintiff's Exhibit 7 was marked for Identification.)

MR. SMITH: (Continuing) "Q Is the position that you have marked on Exhibit 7, where the vessel is bow toward the coastline, do you now say that that is incorrect?

"A This is my last position.

"Q Is that a correct position?

"A Yes.

"Q Where was that with relation to Schone Waardin at the time that the vessel's entire port side was flush against dike?

"A The exact position, the only thing I know is we were just reading the red and white light of Schone Waardin. The exact position putting in the chart, if it was here or a few meters up or down, I don't know."

Going over to page 71:

"Q While you were there did the tugs make fast to the WESTERN EAGLE's bow and stern?

"A Yes.

"Q While she was on the dike?

"A Yes.

"Q And did you observe them steaming away in a southerly direction in an attempt to pull it off the dike?

"A Yes.

"Pennarts 44

"Q And did the WESTERN EAGLE move in a southerly direction at all that you could see?

"A Not off the shore, no.

"Q You say this was solely due to the wind?

"A She was not at the bottom.

"Q Was this solely due to the wind?

"A Yes."

Page 76, redirect examination:

"Q Captain, on the first statement that you made would you circle the position of the anchored tanker?"

That would be Plaintiff's Exhibit 6, your Honor.

"Now on Plaintiff's Exhibit 7, which is the typewritten report that you submitted, you testified to that, would you circle on that one the position of the anchored tanker?"

That would be on Plaintiff's Exhibit 7, your Honor.

"Is there any difference between the position on Plaintiff's Exhibit 6 and 7?

"A It must not be. I don't know who make the print.

"Q Is it approximately the same?

"A It must be approximately the same, yes.

"Q Now compare it with the position on

"Pennarts 45

Plaintiff's Exhibit 4. How do Exhibits 6 and 7 compare with Exhibit 4? Compare the position marked 'tanker' on Exhibit 4 with the position on Exhibit 6. Is there any difference?

"A Not much.

"Q Was there anything unusual about the trim of the WESTERN EAGLE?

"A About the trim?

"Q Yes.

"A We get more ships with that kind of draught.

"Q The draught of the WESTERN EAGLE?

"A Yes.

"Q What was the trim of the WESTERN EAGLE when you boarded her on December 14?

"A That was what they gave me, forward 11-7 and aft 19-6.

"Q Have you piloted any other vessels with similar draughts?

"A Oh, yes."

That is the end of Pennarts deposition, your Honor.

MR. MESHEL: Your Honor, do I assume that the entire deposition will be introduced and I don't have to reread --

THE COURT: No. Don't assume a thing.

MR. MESHEL: All right. Your Honor, there was another statement given by the master and I would offer both exhibits into evidence, previously marked Pennarts Exhibit 3, and the prior exhibit, which has been marked as, I believe, 6.

THE COURT: All right.

(Defendant's Exhibits A and B were received in evidence.)

MR. SMITH: Your Honor, would it be all right for Mr. Werner to be excused, the first witness we had?

THE COURT: Yes, as far as I am concerned.

Just so that I can work my schedule a little bit, can you give me some idea about how long you people will require to complete this case?

MR. SMITH: Does your Honor require that we put in the evidence on damages also?

THE COURT: Not necessarily. I would think we could refer that to a special master, if there is to be assessment of damages, or you could work it out. I leave it to you. You can do it either way you wish.

MR. SMITH: I hope to finish our case some time this afternoon, your Honor.

THE COURT: Can you help me?

MR. MESHEL: I have one witness, your Honor, and I expect that on my direct examination he would take I would

"Pennarts 47

estimate 45 minutes to an hour, perhaps two. I don't know.

THE COURT: Do you think we could finish this case today? There is another one to follow you. I would just like to alert the next people so that they can be here without my waiting around idle.

MR. SMITH: We have two depositions to read, parts of the depositions, your Honor, and one more live witness in plaintiff's case.

THE COURT: I should think you certainly ought to be able to do that, we should be able to finish today, and by that I mean before 5:00 o'clock.

MR. MESHEL: All right. Page 18:

"Q Now would you indicate on Pennarts Exhibit 4 where the Buitenhaven is located? Would you point just initially with your hand.

"A Just about here.

"Q Now would you circle the Buitenhaven with this red pen that I have?

Would the record indicate that the witness has circled on Exhibit 4 that area known as the Buitenhaven in red ink.

Now let me read for a second, Captain, from Exhibit No. 3" which is now I believe Defendant's Exhibit A, which is the statement.

"Pennarts

THE COURT: It would be helpful if on a deposition lawyers gave thought to the fact that the case might go to trial some day and add some known system of numbering. It's unbelievable. Case after case after case. It's a wonder the courts are five years behind. It's a wonder they aren't 55 years behind.

Go ahead.

MR. MESHEL: (Continuing) "I direct your attention to paragraph 3 of Exhibit 3 on page 1 and ask you whether that helps to refresh your recollection that you were abeam of the Buitenhaven when you first boarded the vessel rather than what you have indicated on Exhibit 4.

"A That is abeam of the Buitenhaven. The tanker was just abeam this port of Flushing. We call that the Buitenhaven.

"Q Maybe my question was a poor one. Let me state it again.

I am reading now from Exhibit 3. Would you read along with me, please? It says, 'unfortunately'--do you see the word 'unfortunately'?

"A Yes.

"Q 'Unfortunately, the pilotage boat was late in leaving the harbor and instead of boarding the

"Pennarts 49

WESTERN EAGLE off the pilot station I was not able to get on board until the vessel was nearly abeam of the Buitenhaven.'

"A Yes."

Page 22:

"Q This was the first week, however, that you acted officially as a harbor pilot, is that right?

"A Yes.

"Q That is all I was asking. Now when you boarded the vessel did you have any conversation with the vessel's master concerning the vessel? Yes or no.

"A No.

"Q And did you later learn that the vessel was lower by the stern than she was by the head?

"A No.

"Q The master never told you about this either, did he? The master never told you that either, did he?

"A No.

"Q Did you ever learn in maneuvering the vessel that the WESTERN EAGLE behaved differently than an ordinary T-2 tanker would had she been fully down by the head? Do you understand the question?

"A No."

I apologize, your Honor. I'm sorry. I'm sorry. I shouldn't have read that. Would you strike that question and that answer.

Page 23, at the bottom:

"Q Did you experience any difficulties maneuvering that vessel because of the fact that she was light by the head?

"A Yes."

That is with reference to a T-2 tanker.

Page 24, top of the page:

"Q What difficulties did you experience because of that condition" referring to being light by the head.

"A The first thing for the wind.

"Q What effect did the wind have on the bow, if any?

"A You hope that she is coming starboard with running full astern, but you know it is a small possibility.

"Q Did she go starboard? Did the bow swing to starboard when you went astern with that vessel?

"A No.

"Q Did she do the opposite?

"A YEs.

"Q What do you attribute this to?

"Pennarts 51

"A To stop the engine and give her her head.

"Q No. Was there a reason why the vessel behaved differently than you thought she would react?

"A The wind, yes.

"Q Anything else besides the wind?

"A No.

"Q What about the fact that she was light by the head?

"A That is only the reason of the wind, if she was light by the head.

"Q So the wind would have a greater force on swinging the bow?

"A Yes.

"Q And this wasn't discussed at all by the master, he didn't warn you of that?

"A No.

"Q When you boarded the vessel did you have any conversations at all with the sea pilot?

"A Well, the only thing is that he told me she was bound for the bunkering station at Flushing.

"Q To your knowledge, had he ordered the tugs at the time you boarded the vessel?

"A No.

"Q So that when you boarded the vessel the

"Pennarts 52

tugs were ordered for the first time, is that right?

"A They were ordered to come out.

"Q Yes, but for the first time?

"A Yes.

"Q And that was by you?

"A Let's say I ordered the tugs to come out. I don't know what the officer was talking about.

"Q Now from the time you ordered the tugs until the time that they finally appeared on the scene had the WESTERN EAGLE proceeded in an easterly direction down the Scheldt?

"A Yes.

"Q There is a paragraph in your statement which said that she had an excessive speed. Did she have an excessive speed from the time that you boarded her until the time that the tugs ultimately arrived?

"A Yes. That is because of the floodtide and a combination of the wind and some of the speed of the ship.

"Q In your experience in the Scheldt have you ever had occasion where you operated a ship as a pilot and you had to wait for tugs because they weren't available, for some reason they were somewhere else and you had to wait for them?

"Q Is it the common practice that when this situation occurred you attempt to stem the tide and anchor your vessel?

"A Yes."

At the bottom of page 26:

"Q Do you know what the width of the Scheldt River is at that part of the river where you attempted to make your starboard turn? Is it approximately a mile and a half?

"A Half a mile it is.

"Q Let me show you Defendant's Exhibit 2" and the witness is presented with the chart at page 27 and he computes the distance, "over one mile 1.2."

Page 27, after the computation of 1.2:

"Q Other than this tanker" referring to an anchored tanker, "were there any other vessels anchored in that area?

"A That is the thing. There was no ship anchored between the vessel and the No. 1 buoy in this area. In here, I don't know.

"Q Is it unusual to attempt a turning mane[illegible] while there are other vessels anchored in the Scheldt?

"A It is not unusual.

"Pennarts 54

"Q It is a pretty common occurrence, isn't it?

"A The current is two knots.

"Q No. I said it is a pretty common thing for vessels to turn in the Scheldt, is it not?

"A If we have to wait we have to turn in the current. That is normal.

"Q Is it uncommon for vessels to attempt a turning maneuver in the Scheldt while there are other vessels laying at anchor?

"A No, not uncommon.

"Q You were attempting a starboard maneuver, is that right?

"A Yes.

"Q And you were attempting to come around astern of the anchored tanker?

"A Yes."

Page 29:

"Q Now is this diagram that you have put here on Exhibit 4" -- that is the chart and I believe it's the same exhibit number -- "accurate in light of this statement," referring to Statement B.

"A For me it is the south side, but not the south side of the anchorage.

"Q Is this circle here on the north side of the Scheldt or the south side?

"A That is the north side of the Scheldt.

"Q According to your statement, I take it your recollection was back then it was on the south side?

"A On the south side of the river, yes.

"Q So that this diagram would be inaccurate to the extent that it is on the north side, indicating Exhibit 4, is that right?

"A It is the south side of the river, but not the south side of the anchorage."

Page 31. I am sorry. It really begins the last sentence on page 30:

"Q Were you an advisor or were you in charge of that vessel," indicating the WESTERN EAGLE.

"A The pilot is an advisor according to the law.

"Q Is that the Dutch law as you understand it?

"A Yes.

"Q Now if you had been given a countermand by the master would you have obeyed the master?

"A Yes. If the captain wants to do anything else he can go his way.

"Q From the time that you boarded the vessel, wherever that was, until the time the vessel finally stranded, did the master ever indicate any countermand of any orders that you may have given?

"A No.

"Q Was he in your presence during the entire time that you were aboard the vessel?

"A Yes.

"Q Within talking distance?

"A Yes.

"Q On the bridge?

"A On the bridge. The only thing in that time I had to walk from port to starboard, so it was very busy.

"Q Now would you indicate, using your hands, the approximate size of the radar screen that was aboard the WESTERN EAGLE?

"A Approximately. It is a long time ago.

"Q Was it small or large?

"A Small or large? Medium.

"Q Did you have any difficulties because of that screen of observing the coastline?

"A The picture was not a beautiful picture.

"Q What was unbeautiful about it?

"A We had a lot of echo from the waves.

"Q And it was difficult to read at times?

"A It was not difficult to read. It was -- how do you call it? Sometimes you have a very good picture, but sometimes you have, because of the waves, a bit gain, do you call it?

"Q So you did not get a clear picture all the time?

"A She was clear not exactly just near the center.

"Q And did that present problems for you in attempting to maneuver the vessel?

"A No.

"Q Did that present problems for you as you came close to the coastline, making out the center of the picture?

"A At that time we had no time to look in the radar.

"Q This was during the time that you were getting close to the coastline, that you didn't have time to look at the radar?

"A Yes.

"Q You had a lot of clutter on the screen," referring to the radar screen.

"A Yes.

"Q You had clutter on the screen?

"A Yes.

"Q Were you impeded in any way or prevented in any way from making a starboard turn once you had passed the sternmost portion of the tanker?

"A No.

"Q Can you indicate why a starboard maneuver was not made after you passed the stern of the tanker?

"A I first want to get off speed, because to get off speed my stern was coming to port. That is the reason I just had to take the old position up. So I gave full astern. The head was running port.

"Q Did you feel at the time that you had passed the tanker that your vessel was making too much speed?

"A Too much speed? The floodtide was running. She is running -- I don't know exactly with the southerly wind, but normally it is two knots, and to take off that speed and the little speed of the ship, that is the reason why I --

"Q My question was, however, did you feel that she was traveling too fast and is that the reason why you didn't make a starboard maneuver?

"MR. SMITH: What do you mean by 'too fast'?

"MR. MESHEL: He used the expression 'too fast' and I want to know what he means by that.

"Q Isn't that the expression you used, Captain?

"A Too fast, yes, too fast to go round.

"Q How fast was she going at the time that you attempted to make a starboard maneuver?

"A That is a thing I can't tell exactly, but over the ground 3 to 4 knots."

Page 38. I am sorry. Actually it starts at the bottom of page 37, the last question.

"Q Your statement was that you didn't make a starboard turn because you had excess speed, isn't that right?

"A Look, the distance between this ship and the No. 1 buoy is too small to make a starboard direction if you are running on any speed.

"Q Why was it too small for you to make a starboard turn? Whatprevented you? That is the question I am getting at. What prevented you from making a starboard turn once you had cleared the tanker?

"A I should like to go in the road to make fast my tug boats.

"Q The question was: what prevented you? That is the question I am getting at. What prevented you from making a starboard turn once you had cleared the tanker?

"A I should like to go in the road to make fast my tug boats.

"Q The question was: what prevented you from making a starboard turn. You told me you were attempting to make a starboard turn.

"A Yes.

"Q What stopped you from completing it?

"A I first want to put off my speed.

"Q Why?

"A It is easier to get round the ship. If I start at the speed of zero and I give full ahead, she is turning better than I should try to put the ship starboard in dead slow ahead.

"Q Are you telling me now it was easier to maneuver with less speed than with more speed?

"A No, it is not easier. She has to get some pressure on the rudder, which means keeping a steerage way.

"Q Did the master ever order you at any time to swing around your anchor or to drop anchor

"Pennarts

prior to attempting to make a starboard turn?

"A The master is asking nothing."

Page 40, second from the top:

"Q Did you know anything about the characteristics of that vessel," referring to the WESTERN EAGLE, "before you took over, how she turned? Did you discuss this with the master?

"A No, and that is a case we do not discuss very often with ship's captains."

Page 41, first question:

"Q As you were steaming down the Scheldt in an easterly direction headed toward the No. 1 buoy was your bow on the left side or the right side of the No. 1 buoy?

"A In the time that I decided to give astern she was about right ahead."

The bottom of the page:

"Q And the No. 1 buoy was almost dead ahead?

"A Yes.

"Q I take it there was a floodtide running?

"A Yes."

Page 42, second question:

"Q Why did you find it necessary to make a course alteration, if that was so?

"Pennarts 62

"A To be sure.

"Q What alteration did you make?

"A I gave her full astern."

We are repeating here, but I want to give it a context.

"Q When was that, what time was that?

"A 0405.

"Q Had you now decided not to make a starboard maneuver?

"A Yes.

"Q When did you make that decision, at what time did you decide not to make a starboard maneuver?

"A When I saw that it was not going correct if I was running ahead, if I was still running ahead.

"Q You told us that you initially started to make a starboard maneuver and then you changed your mind.

"A Yes, I changed my mind because if I didn't change my mind, I was just running over the No. 1 buoy.

"Q And what time was it that you changed your mind and decided you were not going to make a starboard maneuver?

"A When I stopped and gave full astern.

"Q What time was that?

"Pennarts 63

"A It is put in here 0405.

"Q After you cleared the buoy I believe you testified that the tugs eventually appeared on the scene."

We already have that. I withdraw the question.

The bottom of page 44. It's out of context, but Mr. Smith read everything but it. He is talking about whether the vessel made sternway or not.

"Q Was your vessel moving toward the --

"A She was still moving."

Page 45. We are talking now about the coasters, to give it a frame of reference.

"Q They were heading in a general westerly direction?

"A Yes.

"Q Did their appearance on the scene come as a sudden surprise to you or had you seen them before?

"A First I have noticed them on the radar, but afterwards no more.

"Q You disregarded --

"A I saw them."

Page 46. Mr. Smith read part of it, in which he said, "How long before they arrived on the scene?" The answer was "Five to ten minutes." These are the down

"Pennarts 64

river coasters now.

"Q And was that the last time you looked at the radar screen?

"A Yes.

"Q So from the time you first saw them," indicating the coasters, "ten minutes before until the time they appeared you had not made any --

"A I had no time to make a radar observation.

"Q During that time period did you blow any whistles of any kind other than the three blasts?

"A Three short blasts.

"Q Other than that one, did you make any whistles?

"A I don't think so.

"Q I show you a portion of what purports to be the vessel's deck log book -- for the record, this is plaintiff's answers to interrogatories -- and direct your attention to 0405 hours. Would you look at that.

"A Three short blasts.

"MR. SMITH: All right. He has got it. What do you want to ask him about now?

"Q Now having read that, Captain, does that refresh your recollection that a maneuver was made by the WESTERN EAGLE to avoid a collision with the seaward bound

"Pennarts 65

coasters?

"A No.

"Q Is that entry incorrect?

"A I don't know. I don't know who put it.

"Q Do you ever have any recollection of the WESTERN EAGLE performing a full astern movement to prevent a collision with the seabound coasters?

"A It is possible it is a combination of it, but I don't know.

"Q Was one of your considerations when you gave full astern to avoid colliding with the coasters?

"A I don't remember if I gave full astern to avoid a collision.

"Q You do recall, and I believe you have already testified, that a full astern movement was given at 0405 hours, isn't that right?

"A The time 0405 I got also out of the bell book.

"Q Yes, and I believe you testified on direct examination by Mr. Smith that that was your recollection, that it was approximately at 0405 hours that you gave a full astern order, is that right?

"A Yes."

Page 50. Actually it begins at the last question on

"Pennarts 66

page 49, continuing on 50.

"Q Were you concerned about a collision with the second coaster, is that the reason you stopped your vessel?

"A Yes. I wanted to give her room.

"Q So that that second coaster was close enough that you were concerned about a possible collision and that is the reason you gave stop?

"A Yes."

Page 53:

"Q Prior to the events that we are talking about you said that the No. 1 buoy suddenly came up, is that right, that you suddenly realized that you were heading toward the No. 1 buoy?

"A Suddenly, I don't know, but I came, when I was running ahead, still running ahead, too close to the No. 1 buoy.

"Q Hadn't you seen that on your radar prior to approaching it?

"A No, I saw her visibly.

"Q Visually?

"A Visually.

"Q Why didn't you make a correction before you were right on top of it?

"Pennarts 67

MR. SMITH: Objection."

MR. SMITH: I objected at that time, your Honor, because I believe his testimony was not that he was right on top of it.

MR. MESHEL: Withdraw the question. Continue on page 54, the answer:

"A Visibility was poor.

"Q What about the radar? Could you see the No. 1 buoy on the radar?

"A Then you need two pilots, one for the radar, one for visual.

"Q In other words, you hadn't consulted the radar, is that right?

"A Yes."

This question begins at page 59 and continues on 60:

"Q What prevented you from laying anchor and waiting for the tugs?

"A I first wanted to take out the speed.

"Q Once having put down the speed why couldn't you make a starboard maneuver then?

"A She went to port. The ship went to port.

"Q Couldn't you control the heading of the vessel?

"A No.

"Pennarts 68

"Q Couldn't you put the ship to starboard at all?

"A No.

"Q She was out of control?

"A No. I couldn't put her to starboard with the engine running astern.

"Q Did you attempt to put the engines forward and maneuver to starboard?

"A A ship running speed and the distance between the anchored ship and the No. 1 buoy, I don't know if we could make the bend."

Page 63. Everything was read on this page except a few words and I want to read them. The last answer he gave, that was read into the record by Mr. Smith, was:

"Because the tug boats were trying to make fast.'

"Q Are you telling me now that the tug boats were following you while you were attempting to make a starboard maneuver or were they standing by waiting to make fast after you had completed your starboard maneuver?

"A No.

"Q No what?

"A They just want to make fast if they could make fast."

On page 64:

"Pennarts 69

"Q Did you testify, Captain, that after you stranded the vessel was able to maneuver up and down the shore line?

"A Yes.

"Q In other words, she wasn't firmly aground?

"A She was blown alongside the dike.

"Q And she wasn't firmly aground?

"A The dike was like this.

"Q Did you sail up and down that dike after she grounded?

"A Yes.

"Q How far did you go?

"A Not far.

"Q What is not far?

"A In this dike there they bend there and I just tried to get a bit back.

"Q Did you maneuver it off? Did yo u move it off or was she firmly on?

"A I moved it, yes.

"Q How far did you move?

"A Not far. A few meters.

"Q Was this before or after you attempted to have the tugs pull you off?

"A I will have to look at my statement.

"Pennarts 70

"Q Do you have a recollection of it?

"A I just remember that I was moving up, but I don't know what time it was.

"Q Were you always able to maneuver your vessel or did there come a time when you weren't able to move it at all?

"A To use the engines?

"Q No, to move the vessel while she was alongside the dike.

"A Well, at a sudden moment they phoned from the engine room that they thought they struck some objection with the propellors.

"Q Prior to that time was the vessel on the dike?

"A Then she was alongside the dike, yes.

"Q No. Was she on the dike at all, was the keel on the dike at all?

"A I don't know."

On top of page 6:

"Q Did you make a full ahead movement at 0412 with a hard starboard rudder?

"A Yes.

"Q And immediately after that did the bow become wedged on the dike?

"Pennarts 71

"A No, I don't think so. At 0412, that is the point I tried to get her off the dike with full ahead, hard starboard, but a bit later I saw it was not possible.

"Q That was 0412?

"A That was 0412.

"Q So that you had become stuck on the dike sometime prior to 0412?

"A A bit later, yes.

"Q Was it before 0412 or after 0412?

"A After 0412."

At page 67:

"Q I am reading now from Pennarts Exhibit 3, Captain, on page 3, the second paragraph. You said 'at 0412 I advised that the engines be rung full ahead and the wheel put hard to starboard with a view to turning the vessel away from the shore, but I quickly saw that the wind was setting us so fast toward the shore that this operation would not succeed. The wind, however, was so strong that it was obvious unavoidingly that the forward part of the vessel was set against the dike.'

Now, does that refresh your recollection that at 0412 the vessel's forward part was set against the dike?

"A After 0412, because if you look in the bell

"Pennarts 72

book it is 0412 stop, 0412 full ahead, 0412 stop.

"Q I didn't ask you what you felt. I asked you what time the vessel touched bottom or the fore ship ran against the shore?

"A The exact time I can't give you.

"Q You don't know?

"A No, because we didn't feel anything."

Page 68, second question:

"Q What was the distance between the bow of the WESTERN EAGLE and the shoreline at the time that you gave a" -- actually, that is taken out of context. Let me read it so it makes some sort of sense.

Page 67, the last question:

"Q So you don't know whether it was 0412 or 0411 or 0410, you don't know when it was, because you didn't feel anything?

"A No, we didn't feel anything, but it was not 0412.

"Q How do you know? If you don't have any recollection, how do you know whether it was 0412 or 0411?

"A Because at 0412 the distance was a bit more than later.

"Q What was the distance between the bow of the WESTERN EAGLE and the shoreline at the time that you

"Pennarts 73

gave a --

"A Very close.

"Q What is very close? A cable?

"A Perhaps closer.

"Q Less than a cable?

"A Yes."

Just a few more lines, pur Honor. Page 69:

"Q So the position that you plotted on Exhibit 4 and have marked B you are now saying you are not sure is accurate or not? Is that what you are telling me?

"A But I can't tell exactly on one meter where we are lying. You have to take the report of Laargestandt."

That, your Honor, I believe is the local nautical authority.

"They know exactly what my position is.

"Q Was it west or east of Schone Waardin?

"A West.

"Q How far west? How many meters west was the bow from Schone Waardin to the beam of Schone Waardin?

"A How many meters? I never tried to make a measure about it.

"Q A ship's length, two ship's lengths?

"Pennarts 74

"A Maybe.

"Q Which? You said maybe.

"A Do I have to make a guess? If you say one ship or two ship lengths, do I have to say?

"Q Give me your best estimate.

"A One or two ship's lengths. It must be more or less one ship's length."

Page 73:

"Q Did you observe the SHV tugs try to pull the WESTERN EAGLE off the dike after she had stranded and the tow line part because it snapped while they were pulling?

"A Before I didn't know any more about it, but now you are asking it, it is possible that after boat this rope broke.

"Q At 0352, when you gave full astern, did you give any whistle blast when you gave that order?

"A No."

That is all.

THE COURT: All right. We will take our luncheon recess now until 2:15.

(Luncheon recess.)

jhd Afternoon Session 75

2:15 p.m.

THE COURT: All right, proceed.

MR. SMITH: Your Honor, I have a few lines to read on redirect examination. At page 36:

"Q Let's go over this again. Your statement, Defendant's Exhibit A, says that at 0345 hours you were opposite the Buitenhaven -- you used the words 'opposite the Buitenhaven' -- and you steamed easterly until 0405 hours, where you were nearly on top of the No. 1 buoy, is that right?

"A Yes, that is right.

"Q And what is the distance that you have measured between those two points?

"A That is abeam of the Buitenhaven to the No. 1 buoy.

"Q Is how long?

"A That is half a mile.

"Q And it took you 20 minutes to make half a mile, is that right?

"A Yes. In that time I have been running astern.

"Q Did you know anything about the characteristics of that vessel before you took over, how she turned? Did you discuss this with the master?

"A No, and that is a case we do not discuss very often with ship's captains.

"Q Did this eventually present a problem for you, the unusual maneuvering characteristics of this vessel?

"A If a ship is maneuvering very bad the captain will tell you."

Page 60. Your Honor, Mr. Meshel read a part of that and there were two more questions that I would like to add. It refers to the attempted starboard maneuver.

"Q What prevented you from making the bend, if anything?

"A What prevented me?

"Q Yes.

"A The distance between the anchored ship and the No. 1 buoy."

In the middle of the page, page 67:

"Q So at 0412 you gave full ahead hard starboard rudder and at that point your foreship came against the shore, is that right?

"A No.

"Q When did the foreship come against the shore, Captain?

"A Past that time."

Your Honor, I would like to call Mr. Alex Pagel as out next witness.

MR. MESHEL: Your Honor, am I correct in assuming that the statements A and B are in evidence? If not, I offer them.

THE COURT: If not, I will receive them.

(Defendant's Exhibits A and B were received in evidence.)

A L E X B. P A G E L, called as a witness by the plaintiff, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q By whom are you now employed, Mr. Pagel?

A By Itabira International Company, Ltd.

Q By whom were you employed in December of 1969?

A Norland Shipping & Trading.

Q When did you leave Norland?

A Two years ago almost exactly to this date.

Q Do you have a recollection of stemming a bunker for the WESTERN EAGLE in December of 1969?

A Yes, I do.

Q Will you examine this Plaintiff's Exhibit 2. Can you identify it?

and I would offer those, in an event.

MR. SMITH: "Direct examination by Mr. Meshel:

"Q Will you state your name for the record, please.

"A Panagiotis Litras.

"Q By whom are you presently employed?

"A From the Piraeus office agents, Trans Continental Navigation Corporation.

"Q What licenses do you hold?

"A Chief officer.

"Q Who issued the license, what authority?

"A Greek license and Liberian license."

Page 5:

"Q When did you first sign on this particular voyage in December of 1968 of the WESTERN EAGLE?

"A About July 1968.

"Q Were you on her continuously through December 1969?

"A Yes."

Page 6, at the bottom:

"Q Now, your previous experience prior to the WESTERN EAGLE, was that aboard tankers?

"A I served on the WESTERN EAGLE before as second officer.

jhd "Litras 93

"Q When did you serve as second officer?

"A Two and a half years.

"Q When?

"A July 1, 1965 until December 31, 1967."

Page 10:

"Q Where was the vessel scheduled to go after she had bunkered after discharging the cargo at France?

"A For the States. After discharging at Boulogne we were going for fueling at Flushing and thence for the States."

Page 11:

"Q What navigational equipment did the vessel have aboard in December of '69?

"A Radar."

Page 12:

"Q Do you have a short distance range?

"A Yes.

"Q What is that range when it is on short distance?

"A 0.75 the minimum scale."

Page 13:

"Q Do you remember what time you left France bound for Flushing?

"A Afternoon December 13th, but the time exactly I don't remember.

"Q Did you give the ship operators an ETA for Flushing?

"A Morning time, 1:00 o'clock, I think."

Page 14:

"Q Were you on the bridge when the vessel was arriving at Flushing?

"A No, I am not on the bridge.

"Q Where were you?

"A I was asleep."

Page 15:

"Q Did there ever come a time when you woke up and went on the deck of the vessel prior to the vessel grounding?

"A Yes, of course.

"Q And how many minutes prior to the grounding were you awake and on the deck of the vessel?

"A One hour before, around 3:00 o'clock in the morning, they took me to get up and stand by in the bow.

"Q Was that your normal watch period?

"A Yes, normal watch, when the ship arrives at the port."

Page 17:

jhd "Litras 95

"Q Now, at 3:00 o'clock did you go to the bow?

"A Yes."

Page 18:

"Q Did you have any crew members with you on the bow?

"A Yes, the carpenter and one AB.

"Q What radio communication did the vessel have aboard in December 1969?

"A A VHF.

"Q What else?

"A And the wireless.

"Q Now, in addition to radar, what other navigational equipment did you have aboard? Did you have a fathometer?

"A Yes, a fathometer.

"Q Anything else?

"A The radio direction finder.

"Q Did you have a gyro compass?

"A Yes.

"Q Did you have a magnetic compass?

"A Yes."

Page 20:

"Q Let us have this portion of the course recorder marked as Litras Exhibit 4."

jhd "Litras 96

This will be Plaintiff's Exhibit 8, your Honor.

(Plaintiff's Exhibit 8 was marked for Identification.)

MR. SMITH: If there is no objection, I will offer it in evidence at this time as a record made in the course of the voyage.

THE COURT: Any objection?

MR. MESHEL: No.

THE COURT: Received.

(Plaintiff's Exhibit 8 was received in evidence.)

MR. SMITH: Page 22:

"Q Now, when you went to the bow at 3:00 o'clock on what deck level were you, the main deck?

"A The main deck, the forward part of the main deck.

"Q At 3:00 o'clock what was the visibility in terms of the fog?

"A The visibility was bad."

Page 24:

"Q Now, during the time that you were on the bow were you able tocommunicate at all with the master on the bridge?

"A Yes,with a walkie talkie."

Page 25:

"Q Were you also to assist in the tying up of

jhd "Litras 97

tugs if and when they were obtained?

"A According to the orders from the bridge, the bridge told me make fast the tug boat or let go the tug boat."

Page 26:

"Q Now, what time was it approximately that you picked up the second pilot?

"A I don't remember the time.

"Q Do you remember where it was?

"A I was in the bow. It was near to Flushing.

"Q Did you pass or were you able to see any other vessels from the time that you came on deck at 3:00 o'clock until the time that you picked up the second pilot?

"A Yes, in the anchorage.

"Q Do you remember the second pilot coming aboard the vessel?

"A Well, I don't see him. I am still standing by in the bow.

"Q Was the vessel stopped at the time you picked him up?

"A Yes, of course the vessel was stopped."

Page 28:

"Q What about the wind, was that blowing in

jhd "Litras 98

pretty strong gusts at the time you picked up the second pilot?

"A We had wind on the starboard side.

"Q How much on the Beaufort scale?

"A I don't remember.

"Q Approximately.

"A 5 to 6.

"Q Which direction?

"A South, southeast, something like that.

"Q What did the vessel do after it picked up the second pilot?

"A We are all the crew standing by fore and aft.

"Q All the crew was out?

"A Yes."

Page 29:

"Q What if anything did the crew members do after the order was given for everybody to go on the main deck?

"A There came one tug boat from the port side and I gave the rope. The bridge ordered me to give the rope and make the tug boat make fast from the port side.

"Q When was the first time you saw that tug?

jhd "Litras 99

"A Close to the time we changed the pilot.

"Q How many minutes?

"A I can't remember the time, but it is close to when we changed the pilot, maybe two minutes, three, five. I can't say exactly.

"Q Approximately two or three or five minutes after you changed pilots you saw for the first time this other tug?

"A Yes.

"Q And how far away from the WESTERN EAGLE's bow was she at the time you first saw her?

"A Oh, it came close and near to the bow port side and I slacked the rope from the bow, our rope, and give it to the tug boat to make fast."

Page 31:

"Q You had no idea of the speed at any time?

"A Well, I know only we are going with slow speed and sometimes stop.

"Q Did the master ever indicate to you any instructions with regard to the tug at a time prior to the time you threw out the slack rope?

"A Yes.

"Q What instructions did he give you?

"A To make fast the tug boat.

jhd "Litras 100

"Q Was the vessel moving at that moment?

"A From the first time when I am standing by on the bow the ship is going slow."

Page 33:

"Q Now, during this time did the vessel ever stop or go astern, from 3:00 o'clock until the time that you saw the tug, at any time?

"A Yes.

"Q How many times did she go astern?

"A I heard only three whistles. The ship makes three whistles and make astern. But when the tug boat came to make fast from port side I give the rope and the tug boat for an unknown reason to me not taking the rope and let go from port side and came from starboard side.

"Q At the time you said that the tug made that maneuver which direction was the wind coming from?

"A Starboard side.

"Q What was the force of the wind at that moment?

"A Five to six.

"Q Was it pushing the bow of the WESTERN EAGLE at all, the wind?

"A Push all the vessel, not only the bow.

jhd "Litras 101

"Q Which direction?

"A From starboard side.

"Q Did the master ever indicate to you what portion of the vessel the tug would appear at?

"A Yes. The captain told me the tug come from port side.

"Q With relation to the bow of your ship in which direction was she headed?

"A The tug boat come from the port side. When I saw the tug boat just from the port side it came.

"Q What portion of the tug was at what portion of the port bow of the WESTERN EAGLE?

"A I saw the bridge of the tug boat first and the lights.

"Q Was her bow facing your bow?

"A When the ship is coming the tug boat come this way from port side (indicating). This is it, approximately."

The witness sketched the position of the tow boat at that time and I have marked it as Plaintiff's Exhibit 9 for Identification. It was Litras Exhibit 5 on his deposition.

MR. MESHEL: No objection.

(Plaintiff's Exhibit 9 was received in Evidence.)

MR. SMITH: Page 36:

jhd "Litras 102

"Q I believe you testified that as you were approaching Flushing harbor you spotted some ships at anchorage, is that right?

"A One or two ships I saw.

"Q To your port or starboard side?"

Page 37:

"Q Did the vessel make a sternway movement any time from the time you came on deck at 3:00 o'clock until the time you described for us in this diagram?

"A No.

"Q Now, what time does the log indicate that you changed pilots and picked up the second pilot?

"A We changed pilots 3:55.

"Q Now look at the bell book, please. Are there any sternway movements prior to 0355 hours? Look specifically at 0352 and 0353, half astern and full astern.

"A (Referring to bell book) Yes.

"Q Now, that is accurate, you made sternward movements prior to the second pilot coming board, is that right?

"A Before we changed pilots I see here astern.

"Q What was the reason for that starnward movement prior to the pilot coming aboard, do you know?

"A To stop the vessel, make astern for stopping the vessel to take the pilot on board.

"Q Now, after you threw the slack line to the tug what did the tug do? Did she move at all?

"A Some people from the tug boat go to take the rope.

"Q Did you see them?

"A Yes.

"Q Where were they situated on the tug, where were they located?

"A At the aft part.

"Q They were at the aft part of the tug?

"A Yes, after I saw the tug boat from this direction, but then it came too close to our bow.

"Q Was she right up against the skin of your ship? Would you indicate on the diagram how the tug maneuvered?

MR. SMITH: For the record, I have given the witness a red pencil to draw that in. The other was a blue position."

This is the sketch that we were referring to.

"Q How long did it take the tug to get from the first position you plotted to the red position?

"A One minute I think.

"Q Then what happened?

"A Then we slacked the rope and the man from the tug boat before taking the rope the tug boat for an unknown reason for me go far away and came from the starboard side.

"Q She went from your port side and came around your starboard side?

"A Yes.

"Q Then what happened?

"A This time I heard the three blasts, the ship make full astern, roughly in the same time when the tug boat changed, left from the port side and came to starboard side, I heard the whistle make three blasts full astern.

"Q Did the master give you any instructions at this time on the walkie-talkie?

"A When the tug boat came to the starboard side the master told me to make fast again and give rope to the tug boat to make fast from the starboard side.

"Q Did you do that?

"A Yes.

"Q Were you assisted by anybody?

"A Yes, by the crew.

"Q Did you throw your ship's line to the tug?

jhd "Litras 105

"A Yes.

"Q What happened next?

"A Next I think the tug boat let go the rope again.

"Q Do I take it that the tug never actually tied the ship's line?

"A Yes, it was tied.

"Q What portion of the tug was it tied on, if it was tied on any portion at all?

"A The aft part as the tug boat make fast the ship's line.

"Q On what part of the tug was it tied on? Was it a grommet of some kind?

"A In the aft part of the tug boat.

"Q Was it physically tied to the tug itself?

"A Yes.

"Q Were you able to see that?

"A Yes, of course.

"Q How far was it from where you were standing on the deck to where the tug was?

"A About 20 meters, 25. I can't say exactly."

Page 42:

"Q Now, is it your testimony that you were able to see the tug's crew tie the ship's line on that

jhd "Litras 106

portion of the tug?

"A Yes. I saw the crew of the tug boat make fast the rope.

"Q And did you see them make it unfast to release it?

"A Yes.

"Q What happened after she came around to your starboard side, what happened next?

"A Next I saw a red light in our bow and I informed this to the bridge.

"Q What happened next?

"A Next I took orders from the bridge to drop the anchor two shackles.

"Q What anchor did you drop?

"A Starboard anchor.

"Q How many shots?

"A Two shackles, and next the bridge informed me we are aground.

"Q Was the ship's line connected to the tug at the time you heard the master say you were aground?

"A The tug boat has already let go of the rope for an unknown reason."

Page 51:

"Q What happened after the master told you

jhd "Litras 107

that you were aground, what if anything did you do?

"A I take the soundings around the vessel, I drop the anchor. After when I am finished with the anchor I take the soundings."

Page 59:

"Q Could you hear the captain talking with any of the ship's personnel at the stern of the WESTERN EAGLE prior to the grounding?

"A Yes. I heard only one thing. The second officer informed the bridge of some vibration, something wrong in back of the vessel.

"Q And what time was this?

"A Before the bridge informed informed me we are aground."

Page 60:

"Q Did you hear the master talking to any other tug prior to the grounding other than the one that was at your port bow?

"A Yes. I heard before the tug boat came on our bow the first time, I heard the captain talk to the second officer in the stern to make fast one tug boat.

"Q And when was this, what time? Was this before or after --

"A About the same time when the tug boat came

jhd "Litras 108

on our bow."

Page 61:

"Q Were you able to see the vessel as it lay on the dike the day after when it became sunlight?

"A Yes. By daylight I can see anything.

"Q Did you have occasion to see the bottom of the vessel at low tide the following day?

"A Yes. I saw the blades from the propellor and the rudder still aground and some stones.

"Q Was the propellor of the vessel and the rudder portion of the vessel wedged into the dike?

"A Yes.

"Q Would you draw us a diagram indicating how the rudder portion of the WESTERN EAGLE looked at low tide as it lay wedged into the dike?"

The witness drew the diagram which is marked Litras Exhibit 7 on the deposition, now is marked Plaintiff's Exhibit 10 for Identification, and if there is no objection, I offer it in evidence, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 10 was received in evidence.)

MR. SMITH: Still on page 67:

"Q Do you know when the last annual survey was of this vessel prior to this grounding?

"A November 1968 in Yokahama, Japan. The last dry dock, you mean?

"Q Yes.

"A Yes.

"Q After the vessel was aground did the tugs ever make an attempt to pull it off?

"A Both tug boats made fast astern and tried to let go the vessel.

"Q They pulled away from the shore?

"A Yes.

"Q Were you still in the bow after the grounding?

"A I was in the back.

"Q You went to the stern?

"A Yes.

"Q Who was back there with you?

"A The second mate.

"Q And did you use the ship's lines?

"A Yes.

"Q Did the ropes break?

"A Yes, one rope broke.

"Q Was that because the vessel was hard aground?

"A Yes.

jhd "Litras 110

"Q And did the tugs then make a second effort to pull the vessel off the dike?

"A Yes, continued.

"Q Without success?

"A Yes, without success."

MR. MESHEL: I have just one page, your Honor, page 50.

"Q Did the master ever intimate to you on the walkie-talkie that he was trying to maneuver his vessel to enter the bunkering berth?

"A Yes. The bridge told me we are going for mooring to the pier, we are near to the pier, we are too close to the pier.

"Q Did he say near or too close, as you said before?

"A Near to the pier, and we are going for a mooring.

"Q What time was this?

"A I can't remember.

"Q Was this before you met the tugs?

"A No, after.

"Q How much after?

"A I can't say the time.

"Q Did he indicate to you where he was

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attempting to go?

"A The captain told me portside we are going, the pier was portside.

"Q And he was attempting to maneuver to the pier?

"A He not told me anything for maneuvering to the pier.

"Q What did he say about the pier? You said he talked to you about the pier?

"A Yes.

"Q What did he say?

"A We are near to the pier and we are going for made fast to the pier.

"Q And was this the bunkering pier?

"A Yes.

"Q What was the time between the time he said that to you on the walkie-talkie and the time he told you that you were aground?

"A 20, 25 minutes before."

MR. MESHEL: That is all I have, your Honor.

MR. SMITH: Your Honor, we marked two other exhibits on that deposition. However, one is a duplication of an exhibit we marked for the pilot, so I see no reason for putting it in again. The other is a diagram to which

apparently no reference has been made in the testimony that has been read.

After the witness was sworn the direct testimony of the witness was taken by Mr. Meshel de bene esse. The witness is one of the tug captains and his name is A. Danker Schuiling. There was a sworn interpreter present who translated the questions into Dutch and the answers in Dutch back into English.

MR. MESHEL: Your Honor, could I make a request at this time. I would like to introduce practically the entire direct examination. I think it's very confusing to the Court and to me to read a portion and then I have to go back over that same portion.

I was wondering if we just could have the whole direct examination read of this witness. It's not that long.

THE COURT: If you are going to do that, why don't you just offer it in and let me read it.

MR. MESHEL: Fine. I would make that offer.

MR. SMITH: If it will save the time of the Court I have no objection to it.

THE COURT: All right. Received.

MR. MESHEL: I take it with the exhibits that we have.

THE COURT: Yes.

MR. MESHEL: It actually contains the deposition

of not only Mr. Schuiling, but also a Mr. Bout, who was the tug master of the FREDERICK HENDRICK, and Mr. Schuiling was the tug master of the SOPHIA.

I would offer the exhibits into evidence as well that were marked at this deposition.

May we make this Defendant's Exhibit --

MR. SMITH: I would like to mark this as Plaintiff's Exhibit No. 11, your Honor.

(Plaintiff's Exhibit 11 was received in evidence.)

MR. SMITH: This would be the depositions of Captains Schuiling and Bout, who were the tug captains on the two tugs in question here.

Your Honor, I think it would be convenient for the Court if we just inserted the exhibits right in the deposition so that they are in step with the deposition.

THE COURT: All right. I suggest that you staple them together or something.

MR. SMITH: Yes, your Honor.

Plaintiff's Exhibits 6 and 7, your Honor, have not been offered, and I believe Mr. Meshel wants them in.

MR. MESHEL: I think the Judge has already ruled on those.

THE COURT: I think I received them, once or twice. If not, I receive them a third time.

MR. SMITH: I think this is premature, your Honor. We can put this in later on the damage case.

THE COURT: I take it he is offering it on the issue of liability.

MR. MESHEL: Right, solely on the issue of liability.

As Exhibit I, I would offer the vessel's free translation of the log book which was attached to the ship owner's answers to interrogatories.

I would like to offer as Defendant's Exhibit J a chart which the answers to interrogatories show was ~~paid~~ by the vessel's master, the WESTERN EAGLE's master, and this was attached as an exhibit to answers to interrogatories, as Defendant's J.

I offer them all into evidence.

MR. SMITH: No objection.

THE COURT: Received.

(Defendant's Exhibits F, G, H, I, and J were received in evidence.)

MR. MESHEL: In addition, I take it there is no reason for me to read the vessel owner's answers to interrogatories since they are a part of the record, the file, but I refer the Court specifically to Question 13, the characteristics of the vessel, the size, etc., the various draughts of the vessel, and so forth, and I would ask the

Court to take notice of the questions propounded and the answers given.

THE COURT: All right.

MR. SMITH: Do I take it that they are going to be put in as an exhibit or just left in the record of the Court?

MR. MESHEL: I take it that is part of the pleadings of this case.

THE COURT: Shouldn't you offer them as part of the proof so that it's perfectly clear?

MR. MESHEL: Very good.

THE COURT: These things change every time a committee sits down and considers the rules.

MR. MESHEL: All right. I would offer as Defendant's Exhibit K collectively, my questions and the ship owner's answers.

THE COURT: All right. Received.

(Defendant's Exhibit K was received in evidence.)

S P A N J E R T J E E R D, called as a witness by the defendant, having first been duly affirmed, testified as follows:

DIRECT EXAMINATION

BY MR. MESHEL:

Q Would you state your name for the record?

A Spanjer Tjeerd.

Q Are you a captain?

A Yes, I am.

Q Where do you come from?

A I come from Flushing, Holland.

Q Can you tell the Court briefly what your background is, your nautical background has been?

A Well, I started my career as a seaman and I got my third mate's certificate and second mate's certificate and first mate, chief officer's certificate, which is also the captain's certificate in Holland.

Q Is that deep sea unlimited master's license?

A I have.

Q When did you get that, Captain, what year?

A I got that 1950, about.

Q Do you also hold a pilot's license?

A I hold a pilot's license.

Q For what area?

A For the last 24 years I been piloting ships up river. Before that -- that means from Flushing to Antwerp and from Antwerp to Flushing, and also to the Ghent Canal, to Ghent. But I have also piloted ships from Flushing to sea and from sea to Flushing.

Q Do you hold a sea pilot's license?

A I held a sea pilot license, yes.

Q Do you hold a river pilot's license?

A Yes.

Q Approximately how many years have you been going to sea?

A 34 years.

Q Have you piloted and handled T-2 tankers?

A I have, yes.

Q T-2 tankers with turboelectric engines?

A Turboelectric engines, yes.

Q And in ballast?

A In ballast and in loaded condition, both.

Q Have you had occasion to sail around the area and pilot vessels around the area that we are talking about, the Scheldt River near Flushing?

A Very often.

Q Are you familiar with the area around Schone Waardin?

A Very familiar.

Q Have you also trained junior pilots, by the way, as an instructor?

A Before I retired I trained junior pilots for about seven years.

Q Also have you recently gone to sea in any particular ad hoc jobs?

A I usually do the trials for the shipyard, for the new ships built by our shipyards.

Q Are you familiar with the inland rules with regard to whistle signals as they existed in December 1969?

A Yes, I am.

Q Did you also at my request obtain an official copy of the rules, the inland rules, from the government?

A Yes.

Q Did you get a certified letter as to these inland rules?

A Here it is.

MR. MESHEL: I would offer the certified copies of the inland rules plus the covering letter from the authorities collectively as Defendant's L.

MR. SMITH: I haven't had an opportunity to examine these, your Honor.

THE COURT: Let's take them subject to a motion to strike if you feel they should be stricken after study.

(Defendant's Exhibit L was received in Evidence.)

Q Can you tell his Honor what the various whistle blasts signified as they existed in 1969 in the Scheldt River, the area we are talking about?

A Yes.

We have three short blasts, which means engines going full astern, and we have turning signals, turning of starboard one prolonged blast followed by a short one, in case we intend to turn around over port we have a prolonged blast followed by two short blasts. A prolonged blast means a blast of at least ten seconds.

Q Are these set forth in Defendant's Exhibit L?

A Yes.

Q Would you read from that -- it's in Dutch -- would you read the relevant whistle signals, so we have it in the record.

A All right.

Q Read them all.

A A prolonged blast of at least ten seconds is to be given by steam vessels and motor vessels as a warning signal to other vessels.

Q Is that to draw attention to other vessels?

A Draw attention.

Q That is one prolonged blast?

A That is one prolonged blast.

Q What else?

A We have four to six second blasts, which is used by ships in fog.

Q Is that a called a long blast?

A That is called a long blast.

Q That is differentiated from a prolonged blast?

A That is different from prolonged blast, yes.

Q How often do you give the four to six second long blast?

A In periods not lasting longer than two minutes.

Q So every two minutes one long blast?

A That's right.

Q In fog?

A In fog. That means that the ship is making headway.

(Continued on page 122.)

Q What else? You talked about the turning.

A The turning signals, yes. One prolonged blast followed by a short one means I am turning around over starboard or I intend to turn around over starboard and a long one followed by two means I intend to turn around over port.

Q Just so the record is clear, what about the stern movement, what is that?

A Three short blasts, my engines are going full astern.

Q The log of the WESTERN EAGLE at 0340 hours indicates that the master stated there was dense fog. In your opinion, would a fog signal be required in dense fog?

A Certainly.

Q Is there a reason for a fog signal, is there a practical reason for it?

A Well, it's a warning. It's a warning, it draws the attention of other ships, in any case, that the ship is under way and making headway.

Q Would you read to the Court --

MR. MESHEL: Your Honor, I had asked for a Dutch translator. I don't think it's going to be necessary. I think what I would like to do is have this expert -- he is also an officially recognized translator in the Dutch

courts --I would like to have him translate the inland rules.

If there is any claim that some part of it is inaccurate I guess there can be a correction of the record, if necessary.

THE COURT: All right.

MR. MESHEL: Thank you.

Q Captain, would you open up the inland rules, the ones that have been marked as Defendant's L in Evidence, and could you explain to his Honor what that book represents?

A This book represents the inland water rules for the River Scheldt.

Q Are there also pilot rules?

A Yes.

Q The book contains the whistle signals, is that right?

A This is the book that contains the whistles.

Q I also have xeroxed copies of portions of the pilot rules, is that right?

A That's right.

Q This consists of a series of xeroxed pages. Would you read to us the pertinent rules with regard to this particular stranding.

MR. SMITH: Objection. Your Honor, there is no foundation for the basis of that question.

THE COURT: He is, I take it, just interpreting, translating.

MR. SMITH: In order to refer to the rules and pull out rules, he has to know something about the circumstances.

THE COURT: I don't see why. He is not testifying as an expert. I don't understand that, do I?

MR. MESHEL: No. He is simply reading the rules as applied in 1969, the pilot rules.

MR. SMITH: If that is it, I have no objection.

MR. MESHEL: He is simply translating.

THE COURT: That is what I understood he was doing.

MR. SMITH: I misunderstood it.

A What did you ask me, Mr. Meshel?

Q Would you read the appropriate articles that you and I discussed prior to coming here today, with regard to the pilotage rules as they existed in 1969, Article 44, for example.

A That says the master of a ship is compelled to supply information to the pilot which the pilot should ask in accordance with Articles 55, 56 and 57.

Q Now read us Articles 55, 56 and 57.

A On arrival aboard the pilot shall ask the name of the ship, where she comes from and where she is bound for,

and also ask all conditions -- all further conditions which may be of importance to know.

Q 56 we decided had to do with gunpowder.

A That's right.

Q So let's go to 57.

A On arrival on board the pilot shall, together with the master, ascertain the position of the ship. He shall ask for all information regarding the draught of the ship, the maneuverability and the deviation of the compass, and also for all characteristics of the ship, so as to be able to give advice to the captain connecting this information.

Q Read Article 54, please.

A The pilot is a guide and advisor of the master. At the request of the master the pilot may give direct orders concerning the maneuvering of the ship, provided the master or the person who replaces him is present and may take over if necessary.

Q To your personal knowledge, were these rules applicable in December 1969?

A Certainly, yes.

Q To the Scheldt River?

A Yes.

Q And the area we are talking about near the Schone Waardin?

A Yes, yes.

MR. MESHEL: Your Honor, if I may just preface this hypothetical question by saying there may be some facts which are in this hypothetical question which may be news to your Honor only because you haven't had an opportunity to hear the testimony of the tug masters.

THE COURT: I understand.

MR. MESHEL: So that there is no confusion, the tug masters testified in substance that they never did take a line, that the vessel instead of touching with the bow, as the pilot said, touched with the stern while going astern near the Schone Waardin.

Q Captain, I am going to ask you to assume the following set of facts:

Assume that a Liberian flag tanker of a T-2 type named the WESTERN EAGLE, with a length, according to the answers to interrogatories, of 574 feet 6 inches, a breadth of 78 feet 11 inches, while in ballast, with a gross tonnage of 14,313 and a net tonnage of 9,910, with a maximum draught of 30 feet 7-1/2 inches and an actual draught of approximately 11 feet 7 inches forward and 19 feet 6 inches aft, or light by the head almost 8 feet, with a turboelectric engine with single right handed propellors which made 10.5 knots at full speed, 7 knots at half speed

and 5 knots at slow speed and 3 knots at dead slow -- tnat is taken from the pilot's statement -- picks up a river pilot at the port of Flushing, Holland, at the pilot station at approximately 0345 hours on the early morning hours of December 14, 1969 in dense fog, at night, and proceeds easterly down the Scheldt River, which has a floodtide running of some 1 to 2-1/2 miles, and this is approximately two hours before high water at Flushing.

Assume further that the pilot testified that under Dutch law he was only the advisor for the master of the WESTERN EAGLE and that the master never countermanded any order of the pilot even though the master was on the bridge with him.

Assume further that the WESTERN EAGLE's radar was according to the pilot, not clear and cluttered.

Assume further that when the WESTERN EAGLE was abeam of the Buitenhaven, as depicted on the chart which has been marked as Plaintiff's Exhibit 4, the Dutch Government river pilot, L. J. Pennarts, first called for tug assistance at 0400 hours and the WESTERN EAGLE steamed past the Buitenhaven at a 90 degree heading eastbound in fog.

Assume further that after being called two tugs owned and operated by a Dutch company known as SHV left the jetty for the WESTERN EAGLE.

Assume further that one SHV tug, called the SOPHIA, with dimensions of 32.16 meters by 7.50 meters by 3.70 meters, equipped with two motors each 669 horsepower, and two propellors with nozzles, with a 4 meter draught, with a full crew, consisting of a master, an engineer and one AB and a second AB, with a Decca radar with a 9 inch screen magnified up to 12 inches with ranges of from 3/4 of a mile to 36 miles, with a compass and VHF and navigational equipment and charts, and another tug owned and operated by SHV, known as the FREDERICK HENDRICK, with dimensions of 27.81 meters by 6.39 meters by 2.79 meters, equipped with a 650 horsepower motor, reversible propellor, with radar, with ranges of from 1-1/2 to 10 miles, with a left handed propellor and a Werkspoor engine, leave the Buitenhaven after the WESTERN EAGLE passed the beam at 0400 hours due south off the outer harbor some 200 meters south of the red pier light.

Assume further that after the pilot boarded the WESTERN EAGLE he testified that the WESTERN EAGLE had too much speed and that this inhibited his maneuver and that he attempted to make a starboard turn at 0356 hours after passing the Buitenhaven and passing an anchored tanker and that he testified that he expected the WESTERN EAGLE to go to starboard with a view to heading the WESTERN EAGLE

westerly to stem the floodtide and await tug assistance from SHV by anchoring in the roads.

Assume further that instead of swinging to starboard the WESTERN EAGLE swung to port at 0356 hours and that this was unusual for a T-2 right handed screw, to swing its bow to port, according to the pilot, and that the pilot testified that this surprised him.

Assume further that the pilot testified that the WESTERN EAGLE's master did not advise the pilot of the WESTERN EAGLE's characteristics nor its draught.

Assume further that the tugs just after 0400 hours steamed slowly out of the Buitenhaven due to the dense fog conditions and took some five to six minutes before they were abeam of the red pier light.

Assume further that the FREDERICK HENDRICK went first and was followed some 300 to 400 meters by the SOPHIA, with both tugs being in radio contact over Channel 6 on the VHF.

Assume further that as the SOPHIA was in the outer harbor the master of the tug SOPHIA estimated the WESTERN EAGLE to be in the vicinity east of Buoy No. 1 due west and he observed that the WESTERN EAGLE lay athwartships in the channel headed south and that the visibility at this time was some 30 to 40 meters due to dense fog and that there was

a southerly wind of some 6 to 7 knots on the Beaufort scale.

Assume further that the SOPHIA's master testified that he was able to see the WESTERN EAGLE on his radar and he was able to see the coast clearly on his radar and at the time he was at the red pier light he estimated that the WESTERN EAGLE'S stern was some 100 to 150 meters from the northern lee shore, which he depicted as Position A on the chart. That is a chart marked at the deposition of Captain Schuiling.

Assume further that the tugs FREDERICK HENDRICK and SOPHIA steamed toward the WESTERN EAGLE as she lay athwart in the channel at Position B and that at approximately 0415 hours the SOPHIA was some 30 meters from the WESTERN EAGLE'S midships at that vessel's stern and the FREDERICK HENDRICK was at the WESTERN EAGLE's port bow some 10 meters from her midships and that while at said positions the WESTERN EAGLE went astern and her bow moved away from the FREDERICK HENDRICK as the FREDERICK HENDRICK'S crew attempted to take a line that was being lowered from the WESTERN EAGLE.

Assume further that at this time two upriver coasters, whose names are unknown, appeared on the scene without any warning signals ever being given from the WESTERN EAGLE and that the first coaster passed some 30 to

40 meters in front of the WESTERN EAGLE'S bow and that this coaster had a beam of approximately 9 meters, and that the second coaster with a beam of 9 meters passed between the WESTERN EAGLE's stern and the northern lee shore, with the WESTERN EAGLE's stern being at this point some 25 to 30 meters from the northern lee shore as the second coaster passed.

Assume further that after the second coaster passed the WESTERN EAGLE'S stern the WESTERN EAGLE's bow swung violently to port, according to Captain Bout, while going astern, and at this point the SOPHIA went to the WESTERN EAGLE's stern and the FREDERICK HENDRICK went to the WESTERN EAGLE's bow and they could view at this point the stones of the dike on the lee shore.

Assume further that the WESTERN EAGLE'S master in his log book indicated as follows:

"To avoid collision with two other vessels seaward bound we were obliged to perform full astern and whistled three short blasts."

Assume further that according to pilot Pennarts no other whistle signals were given while he was aboard the WESTERN EAGLE.

Assume further that in 5 to 10 minutes before the coasters arrived on the scene pilot Pennarts testified that

he did not look at the radar any more.

Assume further that when the coasters appeared suddenly on the scene the master of the FREDERICK HENDRICK stated that he feared a collision would take place between his tug and the second coaster and that he passed between the WESTERN EAGLE's stern and the northern lee shore -- I am sorry. Let me strike that and read that last assumption again. I apologize.

Assume further that when the coasters appeared suddenly on the scene the master of the FREDERICK HENDRICK feared a collision between his tug and the second coaster, which coaster had passed between the WESTERN EAGLE's stern and the northern lee shore, and that as a consequence of this fear he maneuvered the FREDERICK HENDRICK from the WESTERN EAGLE's port bow to the WESTERN EAGLE'S starboard bow to avoid being hit by the coaster.

Assume further that the pilot aboard the WESTERN EAGLE estimated that shortly after or at 0415 hours he was of the opinion that the WESTERN EAGLE grounded on the dike and that subsequently, at 0420 hours, according to the tug SOPHIA's master, the pilot ordered the tugs to the WESTERN EAGLE's bow and stern to pull it off the dike as the WESTERN EAGLE lay portside to the coastline at approximate an 80 to 85 degree heading, which was depicted as Position

on the chart, which was marked in the deposition of Schuiling, at Position D, and that this position was just west of the Schone Waardin, and that both tugs took the vessel's howsers at the bow and the stern and they steamed southerly in an attempt to pull the WESTERN EAGLE off the dike and that during this operation, with a strain on the bow howser, it parted and they realized that she was firmly aground and they could not pull her off.

Now, assuming that set of facts, Captain, do you have an opinion, first of all, of whether the master of the WESTERN EAGLE could have made a starboard turn to stem the floodtide at 0340 hours, when the log shows dense fog, as he was arriving at the pilot station just prior to that, to any time up to the time the vessel was abeam of the No. 1 buoy? Do you have an opinion?

A At 3:40 I take it he was off the pilot station, as you say, and at that time he could easily have come to starboard and turned into the tide at anchor.

Q Would you look at the chart which has been marked in evidence as Plaintiff's Exhibit 4 and indicate with your finger, if you could, the available anchorage positions in the port of Flushing or immediately outside.

A Before passing the pilot station he could have anchored anywhere.

Q In your experience as a pilot and with your knowledge of the port of Flushing, is it customary or usual for tankers to anchor in dense fog conditions?

A Any tanker -- any ship of a size over 1,000 tons will definitely come at anchor in dense fog and will not try to enter Flushing Harbor.

Q What is the reason for that?

A First of all, there is no traffic control.

Q There was none back in 1969?

A There still isn't, but there was certainly not in 1969, December '69. Also coming into the port it's very easy to hit the port facilities, the jetties and the landing stages for the ferries running to the opposite side of the river.

Q Again in your experience, is it usual or unusual for the tugs at the SHV bunkering facility to remain at the jetty or to rendezvous out in the harbor in fog conditions?

A They don't come out in order to do so.

Q Does fog add anything to that determination as to whether they come out or not?

A Yes. The ship anchors on account of fog, he will notify the tugs that they don't have to come out until the fog lifts.

Q Would you think that the requirement of anchoring would be underscored if the pilot --

A I didn't get it.

Q Would the requirement of anchoring the tanker be even more dramatic if there was clutter on the radar?

A Oh, yes, definitely. Then you would hardly see the entrance of the harbor once you got to that spot.

Q In your experience, who orders the tugs, whose authority is it to order the tugs at Flushing? Is it the pilot or is the master?

A The pilot will advise the master to make use of a certain number of tugs and the master will give permission to the pilot to order the tugs.

Q Who ultimately makes the decision on whether to use them?

A The master.

Q Would that be true also of anchoring the vessel? Can he countermand the order of the pilot?

A He could countermand it, but I don't think any captain would do in a case like this.

Q Would he countermand an order if he feared for the safety of the vessel in dense fog?

A If the captain feared for the safety of his vessel, yes, he would.

Q And he has the right to countermand any order?

A Yes.

Q The pilot has testified that he was unable to make a starboard turn because of the fact that his vessel was by the head and the southerly wind was pushing him to the lee shore. Did you hear that in my hypothetical question to you?

A Yes.

Q And did you hear that in the testimony that was read in here today?

A Yes.

Q Is there any procedure whereby you can use the vessel's anchor in attempting to make a helm movement of some kind to stem the tide so that you can anchor and wait for tug assistance?

A Yes, and we often did.

Q What is the procedure that you use?

A We would -- in this case, in this area, between Flushing pilot station and No. 1 buoy, we would drop anchor. Well, if he wanted to go round over starboard, would drop starboard anchor and give one shackle of chain.

Q There has been some testimony that there was a tanker anchored in the Flushing roads and that this somehow prevented a starboard turn of any kind.

Is it normal to have vessels anchored in Flushing

roads in your experience?

A Oh, yes. There are always ships anchored in Flushing roads.

Q Have you ever had occasion to make starboard helm movements around the sterns of anchored vessels?

A Yes, yes.

Q In your opinion did the failure of the WESTERN EAGLE's master to give a warning signal to the oncoming coasters -- was that a competent producing cause of the disaster which ultimately occurred, was it a factor?

MR. SMITH: I don't think the witness is qualified to answer that question. I don't think he has the facts to do it on the face of this hypothetical question.

THE COURT: Could you point out how the hypothetical question is insufficient so that we could supply them?

MR. SMITH: Your Honor, I think it would take a cross examination to do it.

THE COURT: It's a little difficult for me to judge the completeness of his hypothetical question when part of the testimony lurks in depositions that I haven't yet read. That is why I am asking you to help me out so that we can supply the defects and put them in the question.

MR. SMITH: Your Honor, as I will point out as we go along, there are already some discrepancies with the

testimony and the question itself. Perhaps I should point it out on cross examination.

THE COURT: That doesn't do us much good now. I will take the opinion for what it's worth.

Q What fact, if any, does the failure to give warning signals, turning signals or fog signals as the coasters approach have to do with this strand?

Do you understand the question?

A Yes, I understand. I am just thinking.

If you give the fog signal then the coasters will know that there is a ship coming upriver and most likely they will stick to the proper side of the channel.

Q As those tugs --

THE COURT: Most likely they will do what?

THE WITNESS: Stick to the proper side of the channel, they will keep to the starboard side of the channel.

THE COURT: The ship will?

THE WITNESS: Also the coasters coming downriver. Otherwise they might keep to the middle of the fairway.

MR. MESHEL: If I can digress for just a moment, your Honor, the testimony of Captain Schuiling was that as the tugs came down the Scheldt River the WESTERN EAGLE was sideways in the river with its stern to the northerly shore

and that subsequently coasters came upriver on either side of the vessel, across its bow and across its stern, and Captain Schuiling testified and Captain Bout testified when they saw the oncoming coasters they feared for the safety of the vessel and they moved from the WESTERN EAGLE.

I am trying to elicit from the witness testimony--

THE COURT: You say coasters. What are you talking about?

MR. MESHEL: That is the term that is used in Holland. They are small ships, small river going ships.

THE COURT: All right. Just so I know what you are talking about.

MR. MESHEL: All right. Let's call them small ships.

Q What if any effect did the failure to give warning signals to the coasters or the small ships coming upriver have in this particular set of facts?

A Well, I understand that the WESTERN EAGLE wanted to turn around to starboard and had he given the prolonged blast followed by the short one the small ships coming down-river would have known that there was a ship trying to maneuver and trying to make a turn over starboard of 180 degrees and then they are obliged by the inland water rules not to hamper the navigation of the turning ship.

Q In answer to a question by the pilot aboard the vessel he testified that some five to ten minutes before these coasters came he never looked at the radar again and he said he would have needed two pilots aboard the vessel-- I think that was his expression -- to look at the radar, himself and somebody else.

In your experience is it usual and normal for the vessel's crew to assist the pilot in looking at the radar?

A Yes. It's normal for one of the mates to watch the radar screen and give information to the pilot.

THE COURT: Where was the radar screen located on the ship, in the house?

THE WITNESS: In the wheelhouse, yes.

THE COURT: Where was the master conning the ship from, from the wings or the bridge?

MR. MESHEL: The bridge.

THE WITNESS: Yes.

THE COURT: Outside the wheelhouse?

THE WITNESS: Yes.

Q Is it normal to pass communications from what is observed on the radar to the person who is conning the vessel?

A Yes, it is.

Q That is to supply him with eyes, so to speak, in

dense fog, in the dark, is that right?

A Yes.

Q I take it this would be even more crucial since the vessel's stern was near the lee shore, is that right?

A That's right.

MR. MESHEL: That's all I have.

CROSS EXAMINATION

BY MR. SMITH:

Q When did you last pilot a ship on your license as a Scheldt River pilot?

A Four years ago, sir.

Q During that time prior to that how long had you acted as a pilot in the Scheldt?

A 29 years.

Q During that time did you ever have occasion to pilot up or down the Scheldt in reduced visibility?

A What kind?

Q Reduced visibility.

A Reduced visibility, yes.

Q Were there times when the visibility varied, did it go up and down, you had more visibility at one time than another?

A Yes, sir.

Q Is it possible to have heavy fog in one section of

the Scheldt and lighter fog or greater visibility in another?

A Yes.

Q If that were the case would that affect your opinion here today?

MR. MESHEL: Could we have a specific as to what the visibility is, what he means by reduced, so the Captain can make an intelligent answer?

MR. SMITH: I think the Captain understands my question.

Q You were given the fact in the question that dense fog existed?

A Yes.

Q Is that correct, wasn't that one of the facts that you assumed in answering the questions?

A I thought I said where there was dense fog that it is practically prohibited -- you have to anchor in the River Schedlt.

Q Were you given the fact that there was also a coast pilot on board that brought the ship to the pilot station at Flushing?

A What I heard from this morning, what you read from Pennarts' statement.

Q Did you take that into consideration?

A I don't get you.

Q Did you take that into consideration in giving your answers this afternoon to the questions that Mr. Meshel asked you?

A That there was a coast pilot on board?

Q Yes.

A The coast pilot has, of course, more room for maneuvering than the river pilot has.

Q The coast pilot brought the ship up to Flushing, is that correct?

A That's correct.

Q So there was a pilot on board the vessel before Captain Pennarts arrived?

A That's right.

Q Getting back to the visibility, I will ask you the question again. You were given the factual situation that there was dense fog.

A Yes, sir.

Q If the fog was not dense but varied, so that someone on the WESTERN EAGLE could see different objects ashore, lights and objects in the Scheldt, would that change your opinion?

A We have instructions --

Q No. Would that change your opinion, Captain?

A Well, there is a difference between dense fog and

seeing the shore lights.

Q There is a difference?

A Yes, sir.

Q So your opinion would be different, is that correct?

A You may say so.

Q Mr. Meshel said that these coasters were going up river. Do you recall that?

A No. I would call it down river.

Q You would call it down river?

A That's right.

THE COURT: Which way were they going, toward Antwerp or away from Antwerp?

THE WITNESS: Away from Antwerp, your Honor.

MR. MESHEL: That was an error on my part. I would like the record to be altered accordingly, your Honor. I think that's a matter of record.

THE COURT: The coasters were going toward Antwerp?

THE WITNESS: No, were coming from Antwerp, proceeding to sea.

THE COURT: All right.

MR. MESHEL: Seaward bound.

Q You said that there were vessels customarily anchored all over the roads there in Flushing, is that

correct?

MR. MESHEL: Objection, your Honor. That is not his testimony.

THE COURT: I thought it was. But if it isn't he can tell us.

What is your testimony about whether it's customary to have a large number of vessels anchored in the roads at Flushing?

THE WITNESS: It is not customary to have a large number of ships anchored, but it's normal to have a few ships anchored. It depends on the weather. If it has been poor visibility for a period of time you can be sure there will be at least a dozen ships anchored.

Q Do you know how many ships were anchored off the Flushing pilot station on the morning of December 14, 1969?

A No, sir.

Q You don't know what conditions then the master and the pilot of the WESTERN EAGLE encountered as they approached the pilot station then, do you?

A What I gathered from the statement Pennarts make, he only refers to one ship being anchored there.

Q What would that indicate to you as to the visibility if there was only one ship anchored?

A That would mean for me that it's very easy to

anchor a ship there, any ship.

THE COURT: Where is Flushing, at the mouth of the Scheldt?

THE WITNESS: At the mouth of the Scheldt.

THE COURT: On which bank?

THE WITNESS: It's on the right bank, sir, the northern shore.

MR. SMITH: That would be on the left bank proceeding in.

THE COURT: I understand. I have been there.

Q With that orientation, the WESTERN EAGLE was proceeding in, wasn't it, she was proceeding up the Scheldt River?

A That's right, sir.

Q From sea?

A Yes.

Q So she had Flushing on her port side as she proceeded in?

A Yes, sir.

Q One of the facts that you took into consideration was that there was a floodtide of a knot to 2-1/2 knots?

A Yes.

Q Which would it be at the time described in the question given by Mr. Meshel? Would it be one knot or would

it be 2-1/2 knots?

A It would be less than 2-1/2 knots.

Q How much less?

A Well, two hours before high water Flushing you have normally a tide with a strength of about two miles.

Q Two miles or knots, Captain?

A It's the same, according to me.

Q That tide or current was going in the same direction as the WESTERN EAGLE, is that correct?

A That's right.

Q She had it under foot?

A Yes.

Q So that was increasing her speed?

A It was increasing her speed.

Q By two knots?

A Yes.

Q Without doing anything with her engines, the vessel would move along toward Flushing at two knots?

A Certainly, right.

Q Is it unusual for a vessel to have clutter on its radar, Captain?

A It's unusual -- it is not unusual, but that depends on the type of radar you have and it depends whether the officers can work with it.

Q That means that you can get clutter from a poor

adjustment, is that correct?

A That's right.

Q You can also get it from the interference from outside the ship?

A Well, in this case, I heard here this morning there was a wind force 6. Then I think clutter is more or less to be expected in the center of the screen.

Q You didn't hear that the pilot had any difficulty seeing these coasters on radar more than five to ten minutes away, did you?

MR. MESHEL: I object to the form of the question, your Honor.

THE COURT: It's argumentative, I think.

Q Assume, Captain, that the pilot on the WESTERN EAGLE was able to see a coaster five to ten minutes away up the Scheldt from him on the radar. Would you consider that there was anything wrong with that radar?

MR. MESHEL: Objection, your Honor. There has been no such testimony.

MR. SMITH: There has been that testimony.

THE COURT: I will take the question. If there is no factual foundation that's too bad.

Go ahead. Assume those facts. What is your answer?

THE WITNESS: I think that the radar must have been on a range of six miles, six mile range. Now, you said between ten minutes. That would indicate that there is a distance between ships of three miles. So that would not affect the radar screen, the clutter. If you have any clutter it will be in the center of the screen.

Q And you don't know how far that clutter extended in the screen, do you?

A No, no.

Q If you had a half a mile screen it could be for a hundred yards, is that correct?

A Yes. But definitely he wouldn't use a half mile range.

Q What range would he use in that area?

A He would probably use six miles.

Q He would probably use six miles. So a clutter at six miles would be less than it would be at a half a mile, is that right?

MR. MESHEL: Your Honor, there has been no testimony as to any ranges. This is just going to confuse the record. That is the reason I object. There has been no testimony as to what range he had.

THE COURT: Is there testimony in the record about the range?

MR. MESHEL: No.

MR. SMITH: Your Honor, the question of clutter had been raised by Mr. Meshel. I would like to show that it has no relevancy here at all.

THE COURT: If you don't have any factual basis it sure doesn't. I don't know whether you have any factual basis in the depositions that I haven't read.

MR. MESHEL: There is nothing about ranges.

MR. SMITH: There is nothing about the extent of clutter either. That is what I am trying to point out to the Court.

Q Is clutter something that you find at low ranges, Captain, short distances?

A Yes, yes. It makes no difference. There will be clutter at any range.

THE COURT: Just so I am oriented, Captain, could you help me here.

Off the record.

(Discussion off the record.)

BY MR. SMITH:

Q Captain, assume that the pilot boarded the vessel at 0345 and called for the tugs at that time instead of at 0400. Would that change your opinion?

A 0445?

Q 0345 hours.

A 0345?

Q Is the time the pilot boarded the vessel.

A Yes.

Q Assume that the called the tug shortly after that instead of at 0400. Would that change your opinion?

A What opinion do you --

Q The opinion that you gave here that there was something wrong with Pennarts' navigation. I assume that is what you were testifying to.

A I don't say that there was something wrong with Pennarts' navigation.

Q You don't say there was anything wrong with it?

A No.

Q Do you say that there was something wrong with the master's navigation?

A Yes. I said that at 3:40, when there was dense fog, so it was before Pennarts came on board. If you ask what I would have done, I would have anchored the ship.

Q If there was visibility thereafter would you criticize the master for proceeding?

MR. MESHEL: Could we have a definition as to what visibility we are talking about, 30 meters, 40 meters, 100 meters?

THE COURT: Perhaps you could be more specific.

Q Where you can see shore lights, Captain.

A As long as you can see shore lights, and that means that you are four to five cables away from the shore, so we have a vibility of half a mile, then I think he is entitled to proceed.

THE COURT: Are there any other obstacles to navigation there? Is there plenty of water, for example?

THE WITNESS: There is plenty of water. But, of course, the channel is not too wide. Once he passes the Buitenhaven the channel is narrowing.

Q He can't turn after Buoy 1, is that correct?

A You can. I have turned there often.

Q Up river?

A Yes, I have turned quite often up river.

Q Isn't there a bank just beyond Buoy 1?

A There is a bank. You don't have to run a ship aground.

Q Where would you turn the vessel if you wanted to turn it up river?

A You ask me the question after passing No. 1 buoy, is that correct?

Q Yes. If you pass No. 1 buoy where would you have to turn the vessel?

A There are many possibilities. First of all, this is normally clear, this area.

THE COURT: The area around No. 1?

THE WITNESS: Yes.

THE COURT: All right.

A As you see, there is two meters of water here. But that is at mean low water spring and the WESTERN EAGLE was getting here around high water, which means there is at least another ten feet, at least. So he has -- here it says 14 feet, and 10 feet is 24 feet.

Q But he is going over that bank, isn't he, if he does that?

A No, not necessarily.

Q Where would he turn if he didn't turn over that bank?

A That is about half a mile he has after passing No. 1 buoy.

Q Before he could turn?

A No, not before. He can turn as soon as he is clear of No. 1 buoy.

THE COURT: You mean he could turn to the starboard?

THE WITNESS: To the starboard, yes.

Q The chart shows 2.2 meters of water, is that

correct?

A Yes.

Q How far is that beyond the buoy?

A That's about half a mile.

THE COURT: Which way?

THE WITNESS: No. 1 buoy.

THE COURT: Which direction a half mile?

THE WITNESS: Up river.

Q Would you measure that 2.2 meter spot from Buoy No. 1. There is a scale up here, Captain.

A That is 0. -- it's over 0.4 miles.

Q Would you measure it over here, so we have it in cables?

A 4.3 cables.

MR. MESHEL: What is that in miles, Captain?

THE WITNESS: It's four-tenths of a mile, just over four-tenths of a mile.

Q As a master, do you go over shoal spots of 2.2 meters with a vessel drawing 19 feet?

A Certainly not.

Q And what stage of the tide was this?

A This was -- we are talking about 4:00 o'clock, isn't it?

Q We are talking about 4:00 o'clock in the morning

or shortly thereafter.

A All right. I will tell you exactly.

THE COURT: It was floodtide, wasn't it?

THE WITNESS: It was floodtide and it was the 14th. High water was at 5:15.

Q On that date how many feet of water did you have over that spot at the time? Can you compute that?

A Yes. 15 feet plus 7 feet is 22 feet.

Q So you had 22 feet at that spot at that time?

A Yes.

Q That's barely enough to float the WESTERN EAGLE, is that correct?

A That's correct.

Q Again I ask you, would you take a ship with that draught over that spot at 4:00 o'clock in the morning?

MR. MESHEL: Your Honor, I don't know what this is all about, what relevance this has to this case. I fail to see it.

THE COURT: I will take it.

Would it be good navigation to take a ship with that draught over only that much water under the keel, about three feet?

THE WITNESS: Only in case of emergency.

Q Was the wind a force 6 to 7 on the Beaufort scale

or was it 6 to 7 knots?

A 6 to 7 on the Beaufort scale.

Q That is not knots?

A No.

Q How much would that be in knots, if you know?

A I don't know, sir.

MR. SMITH: Your Honor, I do not have a Beaufort scale here, but I would like to put one in evidence. It's a common scale that is used by all mariners. I would like to refer to it after the trial in the brief.

THE COURT: All right. I will take judicial notice of it.

Q Do you have an approximation as to what 6 to 7 knots would be?

A No, sir.

Q Can you estimate it?

A No, I can't.

Q Do you know what effect a wind force of 6 to 7 on the Beaufort scale would have on the WESTERN EAGLE as she was in the position which is shown on this chart, Plaintiff's Exhibit 4A, and if the vessel were going full astern, which way would the vessel back?

A Normally she will move to starboard.

Q Her bow will move to starboard?

A Yes, sir.

Q And her stern will back to port?

A That's correct.

Q That's the normal movement for a right-handed screw, is that right?

A That is correct.

Q When you have a strong wind, does that affect the way the vessel will back?

A It may do.

Q Isn't it a fact, Captain, that most vessels in a strong wind tend to back into the wind rather than away from it?

MR. MESHEL: Can we know at wnat draught?

MR. SMITH: We are talking about the factors here on the WESTERN EAGLE, the draught the WESTERN EAGLE had.

A She might have done, yes.

Q She might have backed to starboard rather than to port, is that correct?

A It's difficult to say. Going astern is always a very difficult maneuver.

Q So your answer is that it's difficult to determine which way it's going to back when you have a strong wind, is that correct?

A Yes, that's correct.

Q You don't know until you actually back?

A No. That's correct.

Q The fact was given to you that the vessel was 8 feet down by the head. Did you understand that fact?

MR. MESHEL: I believe the testimony was 8 feet light by the head.

MR. SMITH: You used the term 8 feet down by the head, Mr. Meshel. I made a note of it.

A Well, she was drawing 11 feet forward with a 19 foot draught is not 8 feet down by the head.

Q Is that a normal trim for a vessel of this type, which is a bulk carrier and not a tanker, to be in when she is in ballast, 11 feet forward, 19 feet aft?

A I don't know, but it's an uncomfortable draught for a pilot.

Q It's an uncomfortable draught for a pilot?

A Yes.

Q In what respect?

A Well --

Q You would like to have it fully loaded?

A Well, I would like to have it on an even keel more or less, maybe one foot down by the stern.

Q But that is not always possible, is it?

A No, it isn't.

Q Vessels are designed differently?

A Yes.

Q Have you piloted vessels of this type?

A Yes, sir.

Q Have you piloted them with this trim on them?

A I don't recollect.

Q These two coasters that were coming down the Scheldt, were they under way legally?

MR. MESHEL: I object to the form of the question, your Honor.

THE COURT: I am afraid the last word is one too many.

Q Was it proper for the two coasters to be under way at the time they were coming down the river on the facts tnat you heard from Mr. Meshel, in dense fog?

A Mr. Meshel didn't tell me there was dense fog where the coasters were. There might have been, as you said yourself, that the visibility varies, they might have had better visibility a mile or so further up river than the WESTERN EAGLE had.

Q So it's very possible that the WESTERN EAGLE was visible to the two coasters coming down the river, is that correct?

MR. MESHEL: Your Honor, are we dealing in

possibilities? There has been no evidence on this. Mr. Smith is talking in terms of possibilities. Anything is possible. I object to the form of the question.

THE COURT: I will take it, again, subject to ignoring it if there are no facts in those depositions which we haven't read.

Q Would you answer the question, please. Is it possible that the coasters were able to see the WESTERN EAGLE as they proceeded down the river?

A If the coasters see the WESTERN EAGLE I take it that the WESTERN EAGLE will see the coasters

Q Yes. If that's true there will be no need for these whistle signals that you described out of your hand book there, is that correct?

Is that correct, Captain?

A Yes -- no, it's not correct. If the WESTERN EAGLE had the intention to turn around over starboard he should have given a prolonged blast followed by a short one.

Q If he did not have the intention of turning to starboard would he be required to blow that signal?

A No.

Q If he did not have the intention of setting up to the north with the current and the wind as he did, he would not blow a signal, would he?

A He is not asked to give any signals in good visibility, apart from turning around signal, of course. That has nothing to do with the visibility.

Q That has nothing to do with the visibility?

A No.

Q Was this vessel stemming the tide or did it have it under foot?

MR. MESHEL: Can we have a time period, your Honor?

Q As the WESTERN EAGLE proceeded up toward Buitenhaven, was the vessel stemming the tide?

A She had the tide with her.

Q Do you understand the term stemming the tide?

A Stemming the tide, I know what stemming the tide is. She was not stemming the tide.

Q She was not stemming the tide?

A No.

Q The tide was under foot?

A That's why he tried to turn around, to stem the tide.

Q He was trying to turn around to stem the tide?

A Yes.

Q Do you know if the coasters sounded any signal to the WESTERN EAGLE? Was that given to you?

A I know nothing about that.

Q Did you assume that there was somebody watching the radar on the WESTERN EAGLE as the vessel proceeded up?

A I assume that in poor visibility there is always a qualified man watching your radar.

Q That is a basic function of seamen, isn't it?

A It is good seamanship.

MR. SMITH: No other questions, your Honor.

MR. MESHEL: That's the defendant's case, your Honor.

MR. SMITH: Your Honor, I have one statement to make to the Court with respect to the master of the WESTERN EAGLE. He left the employ of the ship owners shortly after the accident on a vacation and has not returned to their employ since that time.

We have tried to contact him on many occasions over the last few years without success. We understand that he was ill for a period of time and then for a period of time he was sailing in Communist China on a vessel. So we just haven't been able to contact him and that's the reason why we haven't been able to get his deposition or have him here for his testimony in person in the court.

THE COURT: All right. Do you rest?

MR. SMITH: We rest, your Honor.

Defendant's Exhibit A

LEONARD JOHN FINCHAM, c/o Commissioner of Pilotage, Nieuwendijk 13, Flushing, Netherlands; STATES-

I have been a Pilot on the River Scheldt in the employ of the Dutch Authority for six years. I have held a Dutch Inward Officer's Certificate for nine years and have fifteen years total sea experience.

It has been the practice of the Dutch Pilotage Authority that for a period of one week at a time Pilots are engaged in local pilotage at Flushing.

On the 13th December 1969 I was on that particular duty and was informed that the "Western Eagle" was arriving at Flushing to take bunkers. I knew that "Western Eagle" was proceeding to Flushing with a Belgian Sea Pilot and accordingly, following the normal practice, I went off to the "Western Eagle" in the Belgian Pilotage boat from Flushing. Unfortunately, the Pilotage boat was late in leaving the harbour and instead of boarding "Western Eagle" off the Pilotage Station I was not able to get on board until the vessel was nearly abeam of the Buitenhaven, to where she was bound.

The visibility at this time was moderate and the wind Southerly force 5-6. The vessel was drawing 11'7" forward and 19'6" aft when I boarded at 0345.

Anchored on the South side of the river and opposite the Buitenhaven was a BP tanker. I would have preferred to go SB round off the Buitenhaven, in order to get the ship's head into the flood current, but because of the presence of this tanker I was unable to do this.

Furthermore, I considered that the vessel had too much speed and this inhibited my manoeuvre. In addition, the vessel's assisting tugs had not proceeded out from the Buitenhaven because they had not been ordered.

The problem here was that the Pilot who brings the ship into the harbour nominates the number of tugs he advises to use, and the Belgian Pilot bringing the vessel only to Flushing roads had according to this left this question to me. Accordingly therefore by the time I got on board it was too late for the tugs to make fast off the Duitchhaven.

Having passed the anchored tanker it was my intention to go round to starboard and return down river. The visibility was now such that I could see the shore lights but very little else, giving visibility of about half a mile.

At 0352, having passed the anchored tanker, full astern was given and the engines were stopped at 0356.

Our course up to 0352 had been the normal up-river course of 090 degrees but immediately after the vessel's engines were running astern the head swung 30 degrees to port to 060 degrees, due to the effect of the strong Southerly wind.

At 0358 slow ahead was ordered with hard starboard rudder. The vessel then came to starboard onto a heading of 095 degrees, and at that time No. 1 buoy (which is on the South side of the channel) was almost dead ahead and very close to. Visibility was rapidly deteriorating.

In order to keep clear of the No. 1 buoy the engines were stopped at 0405 and full astern was rung.

At this time the first of our two tugs arrived and prepared to make fast forward. At about the same time, however, a coaster came into sight ahead and proceeding down river. The coaster immediately sounded three short blasts, to which we replied with three short blasts. The coaster passed port to port.

Within a few minutes another vessel heading down-river approached on the starboard bow. I again decided to stop

while this vessel passed, but the forward tug - which was about to make fast - moved away from the vessel. The other vessel, instead of passing down the starboard side, passed down the port side and went clear. This occurred at about 0410. I did not obtain the name of either of these vessels because of the darkness. At 0411, after the second ship had passed, I observed that the wind had set the vessel over towards the North shore, and we were heading 045 degrees with Schone Waardin light dead ahead. I had not observed earlier our proximity to the shore because of the reduction in visibility, and having not been able previously to see the shore lights.

At 0412 I advised that the engines be rung full ahead and the wheel put hard to starboard with a view to turning the vessel a way from shore, but I quickly saw that the wind was setting us so fast towards the shore and that this operation would not succeed. The wind however was so strong that it was obvious unavoidingly that the forward part of the vessel was set against the dijk. I therefore decided to order the engines full astern and this was done, the intention being that by going astern this would reduce the force with which the ship should touch the bottom. When Schone Waardin light was first observed we were about two cables from it.

It was my impression that the vessel first touched bottom at 0415.

I requested the tugs to make fast, and one made fast forward and the other aft with the intention of pulling the vessel's head to starboard, but the tugs were unable to do this against the wind. The engine movements caused the vessel to move ahead and astern, up and down river, whilst being held with her port side against the dijk.

I then requested the forward tug to move to the stern, [illegible] she did, but in spite of all attempts the vessel did not [illegible] her heading. It is my impression that the tugs first [illegible] fast at 0425.

After the vessel had grounded I told the Master that I considered the reason for the grounding was the force of the [illegible] on the starboard side. I did not blame the two vessels which had passed downriver.

I consider that the grounding was a combination of various [illegible] the fact that I was not able to board the vessel until she had already passed the Pilot Station; that when I did board she was proceeding too quickly, and that I had to wait for the tugs because they had not been ordered until I had boarded the ship.

I was using the radar from time to time, but while the other vessels were passing I was keeping a visual watch on them and also the position of the tug which was then ready to make fast.

After the grounding, the engines were put slow ahead at 0425, stopped at 0435, then put half astern at 0438, and slow astern at 0442. The vessel did move astern downriver but still held against the dijk.

At 0450 the engine room reported possible damage to the propeller because of noise which had been heard in the engine room.

The third tug which arrived subsequently was in the same ownership as the first two, and although she made fast she was unable to refloat the ship before it actually took the ground.

Shortly before 0500 hrs. a tug owned by Union Remorquage and another owned by Dijkhuisen approached off our starboard side. The Union tug was prepared to assist under Lloyd's Open Form and the Dijkhuisen tug master at first said that he

also wanted a Lloyd's hook, but later suggested a "friendly" basis.

The Master refused to take the assistance of either of the tugs because he was awaiting instructions from London. Had these tugs made fast at this time they would have possibly been able to refloat the vessel before she actually took the ground.

Several tugs were waiting all day on the South side of the fairway and subsequently, a contract was signed and one of the tugs made fast forward. There was still considerable wind and swell and there were problems in making fast.

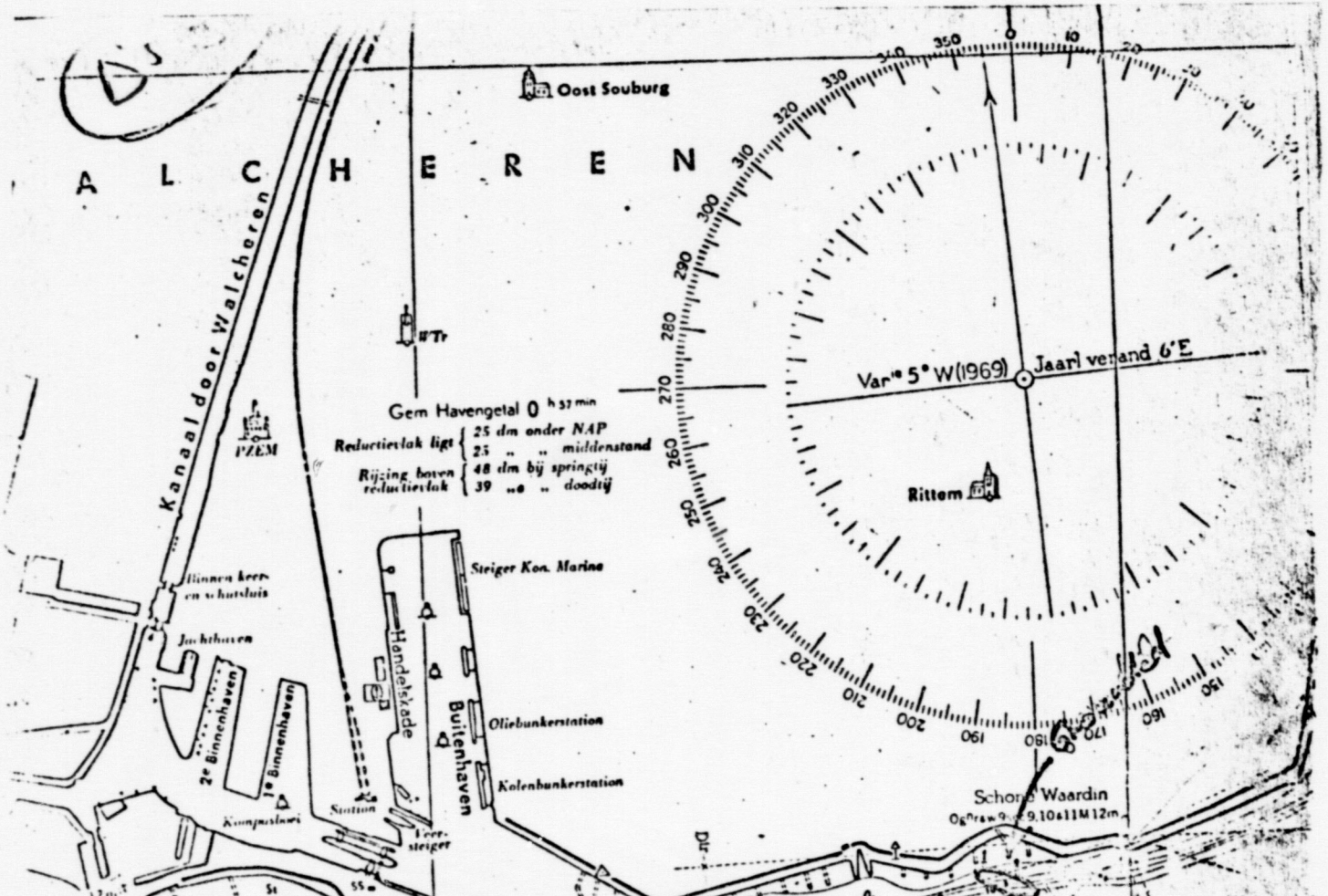
After the refloating, two of the tugs did slip their hooks on occasions but I do not know why this happened.

L.J. Pomarts.

Defendant's Exhibit J

CHART

(See Opposite) ☞


A L C H E R E N
Oost Souburg
Kanaal door Walcheren
W Tr
PZEM
Gem Havengetal 0 h 37 min
Reductievlak ligt { 25 dm onder NAP
25 .. .. middenstand
Rijzing boven reductievlak { 48 dm bij springtij
39 .. .. doodtij
Var^ie 5° W(1969)
Jaarl verand 6'E
Rittem
Steiger Kon. Marine
Handelskade
Buitenhaven
Oliebunkerstation
Kolenbunkerstation
Jachthaven
2e Binnenhaven
1e Binnenhaven
Station
Veersteiger
Schore Waardin
9 10 11 M 12m

Defendant's Exhibit J

Defendant's Exhibit K

DEFENDANT'S EXHIBIT "K"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FAIRMONT SHIPPING CORP. and FAIRWINDS OCEAN CARRIERS CORP., Owners of the Steamship WESTERN EAGLE,

Plaintiffs,

-against-

CHEVRON INTERNATIONAL OIL COMPANY, INC.,

Defendants.

INTERROGATORIES

70 Civil 3382

INTERROGATORIES ADDRESSED TO THE PLAINTIFFS, FAIRMONT SHIPPING CORP. AND FAIRWINDS OCEAN CARRIERS CORP., TO BE ANSWERED IN WRITING, UNDER OATH, WITHIN FIFTEEN (15) DAYS. DEFENDANT DEMANDS THAT THE ANSWERS TO THESE INTERROGATORIES INCLUDE ALL THE PERTINENT INFORMATION GLEANED BY THE ATTORNEYS FOR THE ~~PLAINTIFFS~~ DEF THROUGH THEIR INTERVIEW WITH WITNESSES AND THROUGH THEIR OTHER INVESTIGATION WITHIN THE ~~PLAINTIFFS'~~ DEF PERSONAL KNOWLEDGE.

THE DEFENDANT FURTHER DEMANDS THAT IF THE PLAINTIFFS, FAIRMONT SHIPPING CORP. AND FAIRWINDS OCEAN CARRIERS CORP., AND/OR THEIR ATTORNEYS ACQUIRE ANY FURTHER INFORMATION RELATIVE TO THESE INTERROGATORIES AFTER ANSWERING THESE INTERROGATORIES, THAT SUPPLEMENTAL ANSWERS TO THESE INTERROGATORIES EMBODYING SUCH INFORMATION BE FORWARDED IMMEDIATELY TO THE ATTORNEYS FOR THE DEFENDANT.

Defendant's Exhibit K

(Whenever the word "plaintiffs" is used herein, it refers to FAIRMONT SHIPPING CORP. and FAIRWINDS OCEAN CARRIERS CORP.; the word vessel shall refer to the "S.S. WESTERN EAGLE," referred to in paragraphs "FOURTH, ETC." of the Amended Complaint; the term "stranding" shall refer to the alleged events to the vessel at or near the Port of Flushing, Holland, as alleged in the plaintiffs' Amended Complaint.

In answering each and every interrogatory state with particularity each and every source(s) of information obtained by the plaintiffs or in the possession of the plaintiffs and/or its agents utilized in any manner in answering the interrogatories, citing where appropriate, whether such data are oral and/or written: surveys, reports, letters, communications, investigations, statements, affidavits, log books, official reports, personal notes, etc., the present custodian of all such data and the date(s) that each was communicated, published, transcribed, or prepared, the person(s) involved in such communication, publication, transcription, preparation, etc.

1. With regard to the plaintiff, FAIRMONT SHIPPING CORPORATION state the following, as of the dates set forth in the plaintiffs Amended Complaint.

a. The names and addresses of all persons owning any stock or having any other ownership or financial interests.

b. The names and last known addresses of any and all officers, directors, and/or employees, brokers, agents, or independent contractors, in any way connected with the events of

the plaintiffs' Amended Complaint, citing with particularity the location or place, the precise dates, time and manner that each such individual had with the transactions in question, and the dates and locality of such connection.

c. List all source(s) used in answering each part of this interrogatory.

2. With regard to the plaintiff, FAIRWINDS OCEAN CARRIERS, CORP. state the following, as of the dates set forth in the plaintiffs Amended Complaint.

a. The names and addresses of all persons owning any stock or having any other ownership or financial interests.

b. The names and last known addresses of any and all officers, directors, and/or employees, brokers, agents, or independent contractors, in any way connected with the events of the plaintiffs' Amended Complaint, citing with particularity the location or place, the precise dates, time and manner that each such individual had with the transactions in question, and the dates and locality of such connection.

c. List all source(s) used in answering each part of this interrogatory.

3. With regard to the "contract" dated December 8, 1969, referred to in paragraph "FOURTH" of the plaintiffs Amended Complaint, state with particularity:

a. The person or person(s) acting on behalf of the plaintiffs and the defendant.

b. The substance of all oral and/or written, undertakings, obligations and/or representations allegedly made by the defendant or its representative(s) or agents and employees in

connection with the plaintiffs' purchase of bunker "C" fuel at the Port of Flushing, Holland, by the vessel, stating with particularity:

(i) Any and all references to the price of the bunker"C" fuel oil.

(ii) Any and all references to pilotage.

(iii) Any and all references to habor dues.

(iv) Any and all reference to quay hire.

(v) Any and all references to mooring or unmooring assistance.

c. In answering interrogatory 3(b)(i-vi) describe with particularity the precise person(s), place, time, dates and personnel acting for both the plaintiffs and the defendant that was involved.

d. In answering the instant interrogatories, state whether the alleged undertakings, obligations and/or representations by the defendant were written or oral. If such was oral state with particularity the substance of same and person(s) making the same and the time and place of such alleged oral statements and the substance of all such oral representations. If the same was written attach a true copy(ies) of all such matter.

4. Indicate with particularity, in chronological sequence, the events of the alleged stranding of the vessel as set forth in paragraph "FIFTH" of the Amended Complaint particularizing the following:

Defendant's Exhibit K

a. The names and last known addresses, "z" numbers, licenses and total sea experience of each and every one of the vessel's officers and/or crew members aboard the vessel at the stranding in December of 1969.

b. The names and/or coast guard designation, and owner of any and all tugs allegedly furnished to assist the vessel immediately prior to or subsequent to the stranding of the vessel, particularizing the names and last known address of the tugs' masters.

c. The names and last known addresses of any Port or other official personnel connected with the Flushing Port as of events set forth in paragraph "FIFTH" of the Amended Complaint, stating with particularity the precise connection each such person(s) had with said events and the position each such person held at said time.

d. State the precise times, nautical location, distance(s) traversed, heading(s), speed-direction of the vessel (ie. dead slow, slow ahead, half ahead, full ahead, stop, slow astern, full astern, etc.), from the period December 13, 1969 at 1200 hours through and including December 15, 1970 at 2400 hours, indicating all source(s) of your knowledge. In answering this interrogatory indicate said information at five minute intervals and during the time period 0400 hours through 0500 hours on a one minute interval.

e. Describe with particularity:

(i) The precise portion of the shoreline at which the vessel stranded, citing longitude and latitude, and distance from the high water mark and position of the vessel and the

precise portions of the vessel coming into contact with the land, silt or rocks, and the precise day, hour, minute and second of the stranding of the vessel, indicating all source(s) of your knowledge.

f. Indicate whether any precise instrument check and/or line of sight bearing or fix was ever taken immediately prior to or subsequent to the stranding of the vessel and give all such locations describing the time(s), date(s), person(s) involved and the precise instruments used. List all source(s) of your information.

5. State with particularity at the precise moment of the vessels stranding:

a. The names and official numbers and port registry of all tugs rendering assistance.

b. The precise bearings, nautical positions, and distances from each other and the shore line of all tugs referred to in interrogatory 5(a) and their physical relationship to the vessel.

c. The number and precise locations of all towage lines or gear actually in use describing there dimensions, grade and length and precise points of connection between the tugs and the vessel.

Defendant's Exhibit K

d. The precise location of the tugs in relation to the vessel's hull if the tugs were pushing or pulling the vessel.

e. The source(s) of all knowledge.

6. State with particularity each and every way in which the tugs and their crew(s) were allegedly at fault and/or negligent as alleged in paragraph "SIXTH" of the Amended Complaint, stating with praticularity:

a. The precise tug personnel involved and the particular acts of negligence and/or fault, citing times, locations, and/or nautical position where appropriate. List all source(s) of your knowledge.

7. State with particularity giving a precise, detailed background of how the plaintiffs allege that they are entitled to damages amounting to the sum of $200,000 stating:

a. The precise dollar amount and precise service rendered by any and all personnel and/or companies connected

with the events citing the precise repairs and/or refueling done to the vessel as set forth in paragraph "FIFTH" of the Amended Complaint, indicating the location of the vessel at all such repair and refueling events, personnel and dates involved.

b. The present custodian of all bills, invoices, canceled checks, surveys, reports,etc., the precise per diem (24 hour) charter rate which the plaintiff alleges the vessel was or may be entitled to, citing the basis of all such estimates.

c. Indicate the present custodian of all American Bureau Ship Insurance, Hull or other surveys or documents issued subsequent to the events set forth in paragraph "SIXTH" of the plaintiffs Amended Complaint.

8. With regard to the rough and smooth deck log books of the vessel for the events in suit, state:

a. Where and for what period of time and whose custody they were retained and/or possessed.

b. Trace the custody, possession and/or control of the log books from December, 1969, to the date of the answers to these interrogatories, particularly describing the person(s), business entity, agency or other possessor in custody of such log books and the place and period(s) of time of such custody.

c. If they are no longer in existence, state:

(i) If they were destroyed, indicate the date of such destruction, the person who directed or ordered such destruction, the person(s) destroying same, the government or business agency or department or other entity to whom such destruction was reported, attaching such report or communication to your answers to these interrogatories, if applicable, or state the essence or contents if such report or communication was oral.

Defendant's Exhibit K

(ii) If they were lost, state the time and date of such loss, the place of such loss, the custodian at the time of such loss, the person(s), business, governmental agency, or other entity to whom such loss was reported and/or communicated and the date, author and essence of such report or communication.

9. With regard to the rough and smooth engine logs of the vessel for the events in suit state:

a. Where and for what period of time and whose custody they were retained and/or possessed.

b. Trace the custody, possession and/or control of the log books from December, 1969, to the date of the answers to these interrogatories, particularly describing the person(s), business entity, agency or other possessor in custody of such log books and the place and period(s) of time of such custody:

c. If they are no longer in existence, state:

(i) If they were destroyed, indicate the date of such destruction, the person who directed or ordered such destruction, the person(s) witnessing same, the method of destruction, the place of destruction and the person(s) destroying same, the government or business agency or department or entity to whom such destruction was reported, attaching such report or communication to your answers to these interrogatories, if applicable, or state the essence or contents if such report or communication was oral.

(ii) If they were lost, state the time and date of such loss, the place of such loss, the custodian at the time of such loss, the person(s), business, governmental agency, or other entity to whom such loss was reported and/or communicated and the date, author and essence of such report or communication.

(10) With regard to the rough and smooth bell books of the vessel for the events in suit, state:

(a) Where and for what period of time and whose custody they were retained and/or possessed.

(b) Trace the custody, possession and/or control of the bell books from December, 1969, to the date of the answers to these interrogatories, particularly describing the person(s), business entity, agency or other possessor in custody of such bell books and the place and period(s) of time of such custody.

(c) If they are no longer in existence, state:

(i) If they were destroyed, indicate the date of such destruction, the person who directed or ordered such destruction, the place of destruction and the person(s) destroying same, the government or business agency or department or other entity to whom such destruction was reported, attaching such report or communication to your answers to these interrogatories, if applicable, or state the essence or contents if such report or communication was oral.

(ii) If they were lost, state the time and date of such loss, the place of such loss, the custodian at the time of such loss, the person(s), business, governmental agency or other

entity to whom such loss was reported and/or communicated and the date, author and essence of such report or communication.

11. State whether or not the Master or any other officer of the vessel submitted any written or oral report, statement, affidavit, notes, personal log or any other data to the defendant and/or its agents or employees concerning the events set forth in paragraph "FIFTH" of plaintiffs complaint. If so:

a. Set forth in its entirety all such information.

b. If destroyed, state with particularity the dates of destruction and the best recollection of the information supplied to the defendant, its agents, etc..

12. Describe with particularity all charts, charters, maps or navigational instruments or data of any kind that ~~was~~ on board the vessel at the time of the stranding in question.

13. State with particularity the precise capacities and capabilities or statistics of the vessel at the time of the stranding on December 14, 1969, including the vessel's:

a. Maximum dead weight

b. Drafts (summer, winter and tropical marks)

c. Tons per immersion

d. Overall length

e. Beam

f. Gross and net tonnage

g. Deck levels

h. Navigational equipment and aids.

i. Dimensions of hull

Defendant's Exhibit K

j. The speed in knots when slow ahead, full ahead, slow astern, full astern when:

(i) Fully loaded

(ii) In ballast

k. Amount, location, and candle power of each light(s) or warning signal(s), fog lamps, etc.

l. Engine(s) capacity(ies)

m. List all source(s) of your knowledge

14. At the precise moment of the stranding indicate:

a. The vessel's mean draft

b. The vessel's free board

c. The degree of any list(s) which may have existed and the direction of same.

15. If the plaintiffs claim that the defendant warranted, either expressly or implicitly, any tug, pilotage or other bunkering assistance immediately prior to or subsequent to the events of the stranding of the vessel, state the complete substance of all such warranties. If written attach same, if oral give the substance of same citing, when appropriate, name(s), dates, locations, etc.. List all source(s) of your knowledge.

16. State with particularity the precise weather conditions at the moment the vessel stranded stating:

a. Amount of fog

b. Visibility in feet

c. Precipitation

d. Amount of natural or artificial light available

e. Source(s) of all your knowledge

Defendant's Exhibit K

17. If there were fog conditions existing prior to and at the time of the stranding, indicate each and every procedure or precaution undertaken by the vessel's master or crew, including if appropriate, the use of fog horns, whistles or lights, etc., to either warn nearby vessels, or insure visibility while the vessel maneuvered in any manner.

18. Did the vessel ever maneuver astern prior to its' stranding?

19. If the answer to the above interrogatory is in the affirmative, describe all such sternward movements, in detail, up to the time of the stranding, detailing, if appropriate:

a. The precise time(s) involved, nautical position(s), distance(s) from the shore line, and speed(s) of the vessel, and duration of such sternward movement.

b. The precise positions of all officers or crew members acting as lookouts or assisting the vessel in maneuvering up to the time of the stranding and the substance of any or all statements (oral or written) taken from any of these person(s) subsequent to the events of the stranding of the vessel.

c. The source(s) of your knowledge.

20. List the substance or custodian of all policies of insurance maintained for the vessel during the events in suit including, but not limited to, Hull, P. & I., etc.

b. The source(s) of your knowledge.

Defendant's Exhibit K

Dated: New York, New York
October 27, 1970

BAKER, NELSON, WILLIAMS & MITCHELL

By

ROBERT E. MESTEL

A Member of the Firm

Attorneys for Defendant
Office and Post Office Address
20 Exchange Place
New York, N.Y. 10005
Whitehall 4-5800

Defendant's Exhibit K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

FAIRMONT SHIPPING CORP. and FAIRWINDS OCEAN CARRIERS CORP., Owners of the Steamship WESTERN EAGLE,

Plaintiffs,

-against-

CHEVRON INTERNATIONAL OIL COMPANY, INC.,

Defendant.

- x

ANSWERS TO INTERROGATORIES

70 Civ. 3382

Plaintiffs, Fairmont Shipping Corp. and Fairwinds Ocean Carriers Corp., by their attorneys, Burlingham Underwood Wright White & Lord, answer defendant's interrogatories as follows:

1. (a) All shares are issued to bearer.

(b) Norland Shipping & Trading Corporation, agent for S.S. WESTERN EAGLE; C. D. Mallory & Co. Inc., bunker brokers.

(c) Bunker confirmation dated December 8, 1969.

2. (a) All shares are issued to bearer.

(b) See 1(b) above.

(c) See 1(c) above.

3. (a) Alex Pagel, employee of Norland Shipping & Trading Corporation; Franz Wernur and L. J. Cammarata, employees of C. D. Mallory & Co. Inc.; K. H. Johnson and F. X. Joyce, employees of Chevron International Oil Company Inc.

(b) Terms of the bunker contract were agreed upon among Alex Pagel, Franz Wernur, L. J. Cammarata, K. H.

Johnson and F. X. Joyce, as set forth in "World-Wide Price List", of which copies of the relevant pages are attached hereto and marked Exhibit "A", except that the price was agreed upon as 87 shillings and sixpence per long ton. Defendant's employees confirmed terms of sale to plaintiffs' agent and advised cable address of defendant's agent in Flushing, Holland.

(i) Price as per attached "Bunker Confirmation", dated December 8, 1969, a copy of which is attached hereto and marked Exhibit "B".

(ii) See Exhibit "A" attached hereto, page 9, "Remarks".

(iii) See (ii) above.

(iv) See (ii) above.

(v) See (ii) above.

(c) New York; on or about December 8, 1969; Alex Pagel for plaintiffs; K. H. Johnson and F. X. Joyce for defendant; Franz Wernur and L. J. Cammarata for bunker broker.

(d) See 3(b) (i-v) above.

4. (a) Information not presently available.

(b) Tugs SOPHIA, FREDERICK HENDRICK and WOELDIREN. Names of masters unknown to plaintiffs.

(c) Names of such persons, if any, presently unknown.

(d) Attached hereto free translation of deck log book for December 14, 1969 marked Exhibit "C" and copy of bell book marked Exhibit "D".

(e) (i) Section of chart marked by master showing grounding position attached hereto and marked Exhibit "E".

Defendant's Exhibit K

Vessel first stranded at approximately 0442 hours, December 14. Vessel's bottom and side shell plating, propeller, rudder and appurtenances contacted bottom. Sources of foregoing information are the vessel's logs, surveys and oral statements of master.

(f) Bearing and range taken on Shone Waardin by radar. Information obtained from master.

5. (a) SOPHIA and FREDERICK HENDRICK.

(b) 0438 SOPHIA stationed on starboard side aft. Position of FREDERICK HENDRICK presently unknown.

(c) Presently unknown.

(d) See 5(b) above.

(e) Sources of information are the vessel's log and the master's oral statement.

6. (a) Defendant failed to meet the vessel on her arrival and render the assistance required to maintain the vessel in the channel. Precise tug personnel unknown. The tug personnel were negligent in failing to properly carry out the orders of the pilot. The tugs lack sufficient power to properly assist the vessel and maintain her in navigable water. The source of information is the oral report of the WESTERN EAGLE's master.

7. (a) Plaintiffs will furnish defendant with an itemized statement of their claim when same is prepared by plaintiffs' adjusters.

(b) Stathatos & Co., Ltd., London. Vessel was scheduled to load a cargo of scrap metal, East Coast, United States, for Taiwan, for a lump sum of $303,050.

(c) Stathatos & Co., Ltd., London.

Defendant's Exhibit K

8. All existing logs are on board the WESTERN EAGLE and have not been removed.

(a) No answers required.

(b) " " "

(c) " " "

9. Deck and engine rough logs are on board the WESTERN EAGLE. Smooth logs are not made.

(a) No answers required.

(b) " " "

(c) " " "

10. Only rough engine bell book is kept and is presently on board the WESTERN EAGLE.

(a) No answers required.

(b) " " "

(c) " " "

11. No written reports were made by the master, officers or crew. Counsel for plaintiff interviewed the master.

(a) No answers required.

(b) " " "

(c) " " "

12. Information not presently available.

13. (a) 23,622.

(b) 33'-7 1/2".

(c) No answer required.

(d) 556'-9"

(e) 78' 8"

(f) 14,313 gross tons, 9,910 net tons.

Defendant's Exhibit K

(g) One.

(h) Direction finder, echo sounding device, magnetic and gyro compasses, radar, radio telephone and telegraph, and other navigational equipment and aids required by law or classification society.

(i) See (d) and (e) above.

(j) Information not presently available.

(k) " " " "

(l) Steam turbine, 7,700 shp driving 1 gen 5,400 KW, 2380 V a.c. connected to electric motor 7,500 shp.

(m) Vessel records.

14. (a) Unknown.

(b) Unknown.

(c) None observed.

The last draft readings before the stranding were taken on arrival at the ~~pilot~~ station at 0105, December 14, 1969, and were: forward 11'-07", aft 19'-06".

15. Defendant contracted to furnish pilotage and tug assistance. See Exhibit "A", page 9, attached hereto.

16. (a) Dense.

(b) Less than 300'.

(c) Presently unknown.

(d) No natural light. Artificial light available on board WESTERN EAGLE.

(e) Vessel's log and master's oral statement to counsel.

17. Vessel was fully manned, exhibited the proper lights for a vessel under way and sounded proper fog signals and passing signals.

18. Yes.

19. (a) See attached copy of the bell book, marked Exhibit "D". The precise positions of the vessel at the times shown in the bell book are unknown.

(b) Watch officer, wheelsman and lookout stationed on navigating bridge. Chief officer, bos'n, line handlers and lookout stationed on bow. Deck officer and line handlers stationed on stern. No written or oral statements have been taken from any of the foregoing persons.

(c) Source of information is master's oral statement.

20. Stathatos & Co., Ltd., London.

(b) Custodian so advised counsel for plaintiffs.

Dated: New York, New York
January 11, 1971

BURLINGHAM UNDERWOOD WRIGHT WHITE & LORD
Attorneys for Plaintiffs

By _____
A Member of the Firm
25 Broadway
New York, N. Y. 10004
422-7585

Exhibit A Attached to Defendant's Exhibit K

GENERAL INFORMATION

This is a list of prices, ex terminal (except where otherwise indicated), of marine fuels available by Chevron International Oil Company, and/or their supplying companies. These prices and other charges included herein are subject to change without notice.

All quotations shown are in U. S. Dollars, and payment shall be made in U. S. Dollars (indicated). References to U. S. Dollar equivalents in other currencies are for the buyer's convenience only.

These prices exclude duties and taxes which, if incurred, are for the account of the buyer. Also payable by the buyer are any additional miscellaneous charges such as overtime, detention, small-lot delivery charges, etc., even though they may not be indicated herein. At all ports barging is charged on not less than 90 percent of the quantity ordered, except on deliveries of intermediate bunker fuel.

S. I. is the abbreviation for Subject to Inquiry.

Berthing priority is given to tankers working cargo at oil refinery berths.

INTERMEDIATE BUNKER FUEL

Intermediate Bunker Fuels can be made available at the ports and in the various viscosity grades indicated. Bunker Fuel generally available at ports listed on pages 11 through 15 runs at approximately 1,000 seconds Redwood No. 1 at 100° F. Premia for fuels of lower viscosity are subject to inquiry. In the event the Buyer orders and fails to take delivery of Intermediate Bunker Fuel, the Seller reserves the right to charge Buyer the amount of loss sustained by having to sell the fuel in down-graded form at a lower price than that at which it was ordered.

ADDRESS YOUR INQUIRIES TO:
CHEVRON INTERNATIONAL OIL COMPANY, INC.

U.S.A. WEST COAST OFFICE
555 MARKET STREET
SAN FRANCISCO, CALIFORNIA
CABLE ADDRESS: CHEVRONINT, SAN FRANCISCO
TELEPHONE: 434-0330
TELEX NO.: 34-0414

U.S.A. EAST COAST OFFICE
245 PARK AVENUE
NEW YORK, NEW YORK
CABLE ADDRESS: CHEVRONINT, NEW YORK
TELEPHONE: 661-8790
TELEX NO.: 12-5104

U.S.A. GULF COAST OFFICE
1111 TULANE AVENUE
NEW ORLEANS, LOUISIANA
TELEPHONE: 524-5711
TELEX NO.: 05-8243

Exhibit A Attached to Defendant's Exhibit K

American Samoa	16	Standard Oil Co. of California
Aruba	12	Mobil Oil East Africa Ltd.
Australia	15	Caltex Oil (Australia) Pty. Ltd.
Bahamas	5	Freeport Bunkering Co., Ltd.
Bahrain	11	Bahrain Petroleum Co., Ltd.
Bejaia	11	Special arrangements through Chevron International Oil Co. Ltd.
Belgium	9	S.A. Chevron Petroleum Company N.V.
Canada		
East Coast	5	Irving Oil Co., Ltd.
West Coast	5	Standard Oil Co. of British Columbia Limited
Ceuta	11	Special arrangements through Chevron International Oil Co. Ltd.
Colombo	13	Caltex Ceylon Ltd.
Dakar	11	Elf Union
Denmark	8	Special arrangements through Chevron International Oil Co. Ltd.
Djibouti	12	Soc. Francaise Des Petroles de Somalie
East Africa		
Dar-Es-Salaam	12	Caltex Oil (Tanzania) Ltd.
Mombasa	12	Caltex Oil (Kenya) Ltd.
Beira	12	Sociedada Nacional de Refinacao de Petroleos
Lourenco Marques	12	Sociedada Nacional de Refinacao de Petroleos
Eire	7	Arrangements through Chevron International Oil Co. Ltd.
Fort de France	5	Elf Union
France	9	Elf Distribution
Genoa	11	Chevron Oil Italiana, S p.A.
Germany		
Hamburg	9	Special arrangements through Chevron International Oil Co. Ltd.
Kiel Canal	9	Special arrangements through Chevron International Oil Co. Ltd.
Gibraltar	11	Chevron International Oil Co. Ltd. Gibraltar
Hawaii	2	Standard Oil Co. of California
Holland		
Amsterdam	9	Special arrangements through Chevron International Oil Co. Ltd.
Rotterdam	9	Special arrangements through Chevron International Oil Co. Ltd.
Flushing	9	Steenkolen-Handelsverceniging N.V.
Hong Kong	13	Caltex Oil Hong Kong Limited
India	13	Caltex (India) Ltd.
Iran	11	Calif. Asiatic Oil Company
Japan	14	Caltex Oil (Japan) Ltd.
Jiddah	12	Arabian-American Oil Co.
Karachi	13	Caltex Oil (Pakistan) Ltd.
Korea	14	Honam Oil Refining Co. Ltd.
Las Palmas	11	Special arrangements through Chevron International Oil Co. Ltd.
Lisbon	11	Special arrangements through Chevron International Oil Co. Ltd.
Canal Zone	5	Cia. Petrolera Chevron
Republic of Panama	5	Cia. Petrolera Chevron
Penang	13	Caltex Oil (Malaysia) Ltd.
Philippines	13	Caltex (Philippines), Inc.
Port Gentil	11	Elf Union
Port Said	12	Societe Cooperative des Petroles
Puerto Rico	5	Cia. Petrolera Chevron, Inc.
Ras Tanura	11	Arabian-American Oil Co.
Sfax	11	Special arrangements through Chevron International Oil Co. Ltd.
Sidon	12	Mediterranean Refining Co.
Singapore	13	Caltex (Asia) Limited
South Africa	12	Caltex Oil (S.A.) Ltd.
Spain	10	Caltex Oil, S.A.E.
Suez	12	Caltex (Egypt) S.A.E.
Sweden	8	Arrangements through Chevron International Oil Co. Ltd.
Tahiti	16	Tahiti Petroles SA.
Tamatave	12	Special arrangements through Chevron International Oil Co. Ltd.
Turkey	11	Istanbul Petrol Rafinerisi A.S.
United Kingdom	7	Chevron Oil (U.K.) Ltd.
U.S. Great Lakes		
Detroit, Mich.	2	Allied Oil Co.
U.S. West Coast	1	Standard Oil Co. of California
U.S. East/Gulf Coast		
Baltimore, Md.	3	Hess Oil & Chemical Company
Boston, Mass.	3	Chevron Oil Co., Eastern Division
Brunswick, Ga.	3	Eastern Seaboard Petroleum Co., Inc.
Corpus Christi, Tex.	3	Southwestern Oil & Refining Co.
Fernandina, Fla.	3	Eastern Seaboard Petroleum Co., Inc.
Galveston, Tex.	3	Chevron Oil Co., Western Division
Houston, Tex.	3	Chevron Oil Co., Western Division
Jacksonville, Fla.	3	Eastern Seaboard Petroleum Co., Inc.
Kings Bay, Ga.	3	Eastern Seaboard Petroleum Co., Inc.
Miami, Fla.	3	Belcher Oil Co.
Mobile, Ala.	3	Standard Oil Co. (Kentucky)
New Orleans, La.	3	Chevron Oil Co., Southern Division
New York, N.Y.	3	Chevron Oil Co., Eastern Division
Norfolk, Va.	4	Special arrangements through Chevron International Oil Co. Inc.
Pascagoula, Miss.	4	Standard Oil Co. (Kentucky) / Fuel Services, Inc.
Pensacola, Fla.	4	Standard Oil Co. (Kentucky)
Philadelphia, Pa.	4	Hess Oil & Chemical Company
Port Canaveral, Fla.	4	Belcher Oil Company
Port Everglades, Fla.	4	Belcher Oil Company
Port Tampa, Fla.	5	Western Fuels, Inc.
Portland, Maine	5	Consolidation Coal Company
Savannah, Ga.	5	Colonial Oil Industries, Inc.
Tampa, Fla.	5	Western Fuels, Inc.
W. Palm Beach, Fla.	5	Belcher Oil Company
Venezuela		
Bajo Grande	6	Chevron Oil Co. of Venezuela
Maracaibo	6	Chevron Oil Co. of Venezuela

CHEVRON INTERNATIONAL BUNKER PRICES
PRICES QUOTED PER LONG TON IN U.S. DOLLARS

INTERMEDIATE BUNKER FUEL									PORTS	MARINE DIESEL		GAS OIL		BACKGROUNDS	REMARKS
2	4	6	8	10	12	15	18	Eff. Date		Price	Eff. Date	Price	Eff. Date		
									GERMANY						
17.82	-	15.96	-	15.24	-	14.70	-	1- 1-69	HAMBURG	26.70	1- 1-69	31.02	1- 1-69	1	Additional Intermediate Bunker Fuel grades are subject to inquiry.
17.82	-	15.96	-	15.24	-	14.70	-	1- 1-69	KIEL CANAL (BRUNSBUTTELKOOG)	26.70	1- 1-69	31.02	1- 1-69	10	
									THE NETHERLANDS						
17.82	-	15.96	-	15.24	-	14.70	-	1- 1-69	AMSTERDAM	26.70	1- 1-69	31.02	1- 1-69	1	Additional Intermediate Bunker Fuel grades are subject to inquiry. Following included in the price: Pilotage, harbor dues, clearance, quay hire, mooring, unmooring and ordinary tug assistance if required, provided vessel enters Flushing for purpose of bunkering only and lifts min. 150 tons. Price for deliveries of less than 150 tons is subject to inquiry.
17.82	-	15.96	-	15.24	-	14.70	-	1- 1-69	FLUSHING	26.70	1- 1-69	31.02	1- 1-69	3	
17.82	-	15.96	-	15.24	-	14.70	-	1- 1-69	ROTTERDAM	26.70	1- 1-69	31.02	1- 1-69	1	
									BELGIUM						
17.82	-	15.96	-	15.24	-	14.70	-	1- 1-69	ANTWERP	26.70	1- 1-69	31.02	1- 1-69	1	Additional Intermediate Bunker Fuel grades are subject to inquiry.
19.02	-	17.16	-	16.44	-	15.90	-	1- 1-69	GHENT	27.90	1- 1-69	32.22	1- 1-69	4	
									FRANCE						
SI	-	-	15.36*	-	-	-	-	1- 1-69	AMBES	26.70	1- 1-69	31.02	1- 1-69	5	
SI	-	-	-	-	-	-	-		BAYONNE	SI		SI			Deliveries made by tank truck
SI	-	-	15.36*	-	-	-	-	1- 1-69	BORDEAUX	26.70	1- 1-69	31.02	1- 1-69	1	
SI	-	-	15.36*	-	-	-	-	1- 1-69	DONGES	26.70	1- 1-69	31.02	1- 1-69	6	
SI	-	-	15.36*	-	-	-	-	1- 1-69	DUNKIRK	26.70	1- 1-69	31.02	1- 1-69	5	
SI	-	-	15.36*	-	-	-	-	1- 1-69	LA PALLICE	26.70	1- 1-69	31.02	1- 1-69	7	Deliveries made by tank truck
SI	-	-	14.22*	-	-	13.56	-	1- 1-69	LAVERA	25.62	1- 1-69	29.94	1- 1-69	12	
SI	SI	SI	SI	SI	SI	SI	SI	4- 1-69	LE HAVRE	26.70	1- 1-69	31.02	1- 1-69	5	
SI	-	-	15.36*	-	-	-	-	1- 1-69	LE VERDON	26.70	1- 1-69	31.02	1- 1-69	8	
SI	-	-	14.22*	-	-	13.56	-	1- 1-69	MARSEILLES	25.62	1- 1-69	29.94	1- 1-69	1	Barging essential
SI	-	-	15.36*	-	-	-	-	1- 1-69	NANTES	26.70	1- 1-69	31.02	1- 1-69	8	
SI	-	-	15.36*	-	-	-	-	1- 1-69	PAUILLAC	26.70	1- 1-69	31.02	1- 1-69	1	Barging essential
SI	-	-	15.36*	-	-	-	-	1- 1-69	ROUEN	26.70	1- 1-69	31.02	1- 1-69	1	
SI	-	-	15.36*	-	-	-	-	1- 1-69	ST. NAZAIRE	26.70	1- 1-69	31.02	1- 1-69	8	
SI	-	-	14.22*	-	-	-	-	1- 1-69	SETE	25.62	1- 1-69	29.94	1- 1-69	11	Barging essential

*, Light Fuel Oil with viscosity approximately 900 seconds redwood 1 at 100°F available.

Exhibit B Attached to Defendant's Exhibit K

P. O. BOX 287
LENOX HILL STATION
NEW YORK, N. Y. 10021

TELEPHONES
CHARTERING (212) 861-8440
BUNKERS (212) 628-8400
LONDON RELAY
LONDONWALL 6684

REPRESENTING
GLANDER-INTERNATIONAL-SHIPPING CORP.
BLIX, MALLORY COMPANY SHIP SALES

WE Pay. 37

BUNKER CONFIRMATION

VESSEL: WESTERN EAGLE

BUYER: NORLAND SHIPPING & TRADING

SELLER: CHEVRON INTERNATIONAL OIL CO.

TYPE OF OIL: BUNKER "C"

QUANTITY: 1000 TONS MASTER'S REQUIREMENTS

PRICE: 87/6 PER LONG TON less Discount to C.D.M.

VESSEL'S AGENT: CHEVRON

PORT: FLUSHING

READINESS DATE: DECEMBER 12-16, 1969

PAYMENT: 30 DAYS FROM DATE OF INVOICE

DATE: 12/8/69

FIXTURE #: CHEVRON-427

It is understood that if the subject Vessel's orders are changed, or if for any reason she does not require the bunkers, this order may be cancelled without obligation, provided however that such notice of cancellation is given before barging, if any, has been commenced. If commenced, such charges as incurred will be for buyer's account.

This agreement is subject to Force Majeur Clauses, Such as Acts of Government, War, Strikes, Lock-outs, or other contingencies beyond the seller's control.

Copy of this confirmation to Buyer and Seller. This confirmation conforms with wire, phone, letter, or personal solicitation, any errors or omissions to be reported by either party immediately.

SPECIAL PROVISIONS:

Please sign and return one copy of this confirmation at your earliest convenience. Thank you so very much for the opportunity extended us in arranging this business.

Very truly yours,
C. D. MALLORY & CO., INC.

F. Warner
For: L. J. Cammarata

Owner or Rep.'s Signature

Exhibit D Attached to Defendant's Exhibit K

COPY OF BELL BOOK

00.41	Half ahead
00.41	Slow ahead
00.45	Dead slow Ahead
00.53	Stop Engine
01.01	Dead slow ahead
01.01	Stop
01.03	Full ahead
03.34	Half ahead
03.37	Slow ahead
03.45	Stop
03.52	Half astern
03.53	Full astern
03.56	Stop
03.58	Slow ahead
04.05	Stop
04.05	Full astern
04.10	Stop
04.11	Fulllastern
04.12	Stop
04.12	Full ahead
04.12	Stop
04.13	Full astern
04.15	Slow astern
04.16	Half astern
04.16	Full astern
04.23	Stop
04.26	Slow ahead
04.35	Stop
04.38	Half astern
04.42	Slow astern
04.42	Stop
04.49	Slow astern
04.50	Stop
05.19	Slow ahead
05.19	Stop

WESTERN [illegible] MONROVIA

.....

Theodorou, Theodoros, Master

Plaintiffs' Exhibit 4

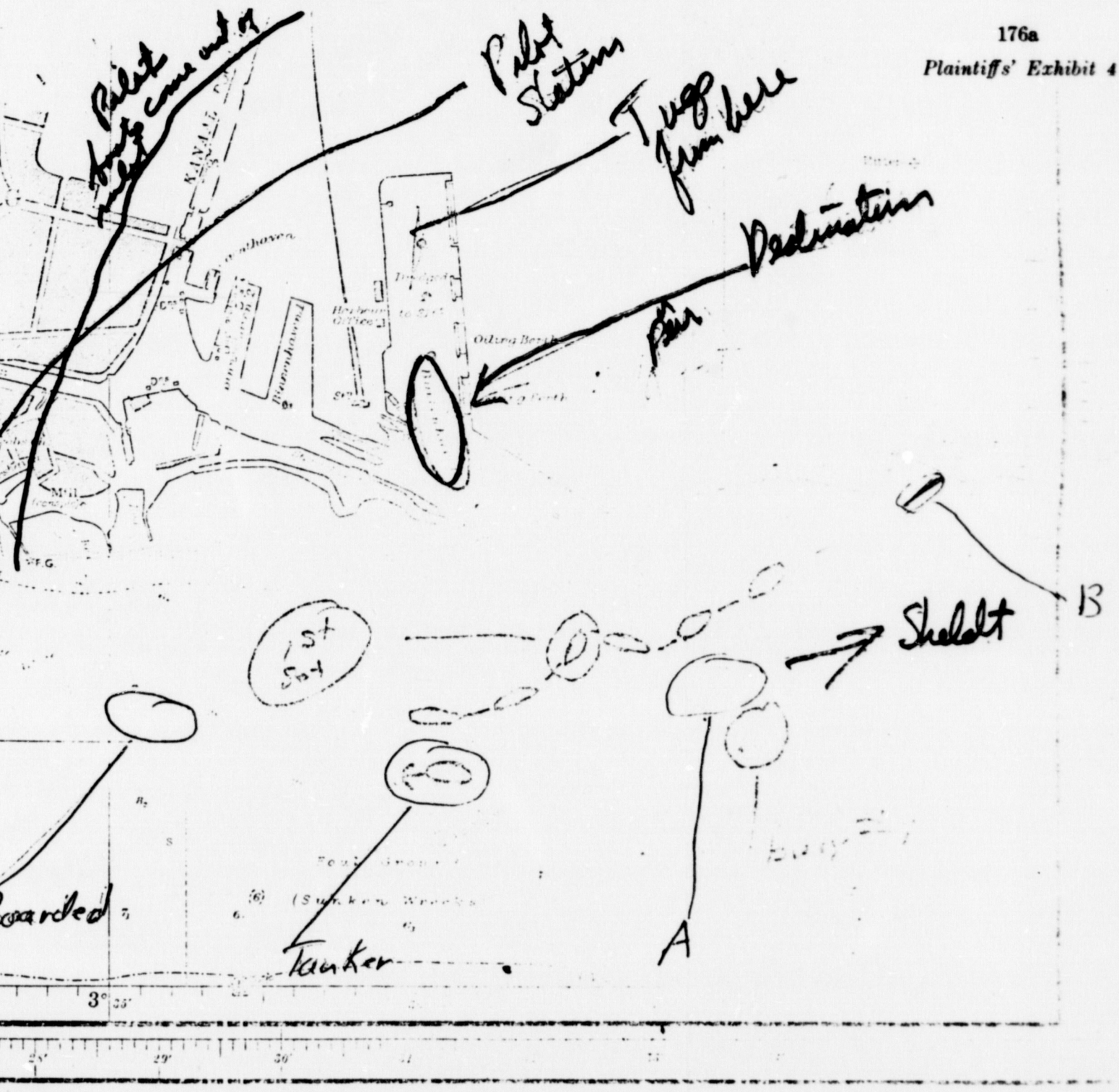
CHART

(See Opposite) ☞

Copy Plaint. Ex L. 4



Plaintiffs' Exhibit 4



"WESTERN EAGLE" 177a

Plaintiffs' Exhibit 5 Day : Decem.14th 1969

COPY OF BELL BOOK

00.41	Half ahead
00.41	Slow ahead
00.45	Dead slow Ahead
00.53	Stop Engine
01.01	Dedd slow ahead
01.01	Stop
01.03	Full ahead
03.34	Half ahead
03.37	Slow ahead
03.45	Stop
03.52	Half astern
03.53	Full astern
03.56	Stop
03.58	Slow ahead
04.05	Stop
04.05	Full astern
04.10	Stop
04.11	Fulllastern
04.12	Stop
04.12	Full ahead
04.12	Stop
04.13	Full astern
04.15	Slow astern
04.16	Half astern
04.16	Full astern
04.23	Stop
04.26	Slow ahead
04.35	Stop
04.38	Half astern
04.42	Slow astern
04.42	Stop
04.49	Slow astern
04.50	Stop
05.19	Slow ahead
05.19	Stop

WESTERN EAGLE SHIPPING CO. LTD. Piraeus

.....

Theodorou, Theodoros, Master

Plaintiffs' Exhibit 6

WRITTEN STATEMENT OF PILOT IN DUTCH LANGUAGE

(See Opposite) ☞

LOODSVERKLARING

van de loods ~~Binnendienst~~ / ~~Zeedienst~~ * der 1 klasse L.J. Pennarts

Standplaats Vlissingen

Aard van het ongeval: Aan de grond komen Bewesten het baken van de Schone Waesdijn.

Gegevens van het Schip

Naam van het schip: s.s./m.t. The Western Eagle Nat.: Lib. BRT.: 14313

Naam van de kapitein: Theodoron Lading: Ballast (soort)

Diepgang vóór: 11'-7" ; achter 14'-6" Lengte en breedte v/h schip: 574'6"/73'-6" m

Soort machine ~~stoom~~ / ~~motor~~ / turbine * Schroeven: enkel/~~dubbel~~; rechts/~~links~~ *

Vaart van het schip bij: VK 10.5 ; HK 7 ; LZ 5 ; ZLZ 3

Kompas: ~~magnetisch~~/giro* Deviatie bij koers – volgens opgave – volgens eigen waarneming –

Radar aan boord en in gebruik ja/~~neen~~* VHF aan boord en in gebruik ja/~~neen~~*

Loods aan boord gekomen: 03.45 Nabij bruinisharen (plaats en tijd)

Schip geassisteerd door – sleepboten; vóór: – ; achter: –

van – (plaats) tot – (plaats)

Zicht: Slecht Wind: Z 5/6 (richting en kracht)

Zee: ** –

Gegevens betrekking hebbend op het ongeval

Nauwkeurige plaats van het ongeval: Bewesten baken Schone Waesdijn

Vaart van het schip, even vóór het ongeval: Tijd: 4.22 Datum: 14-12

Tij, tijdens het ongeval: ~~Eb~~, Vloed, ~~Stil water~~ *

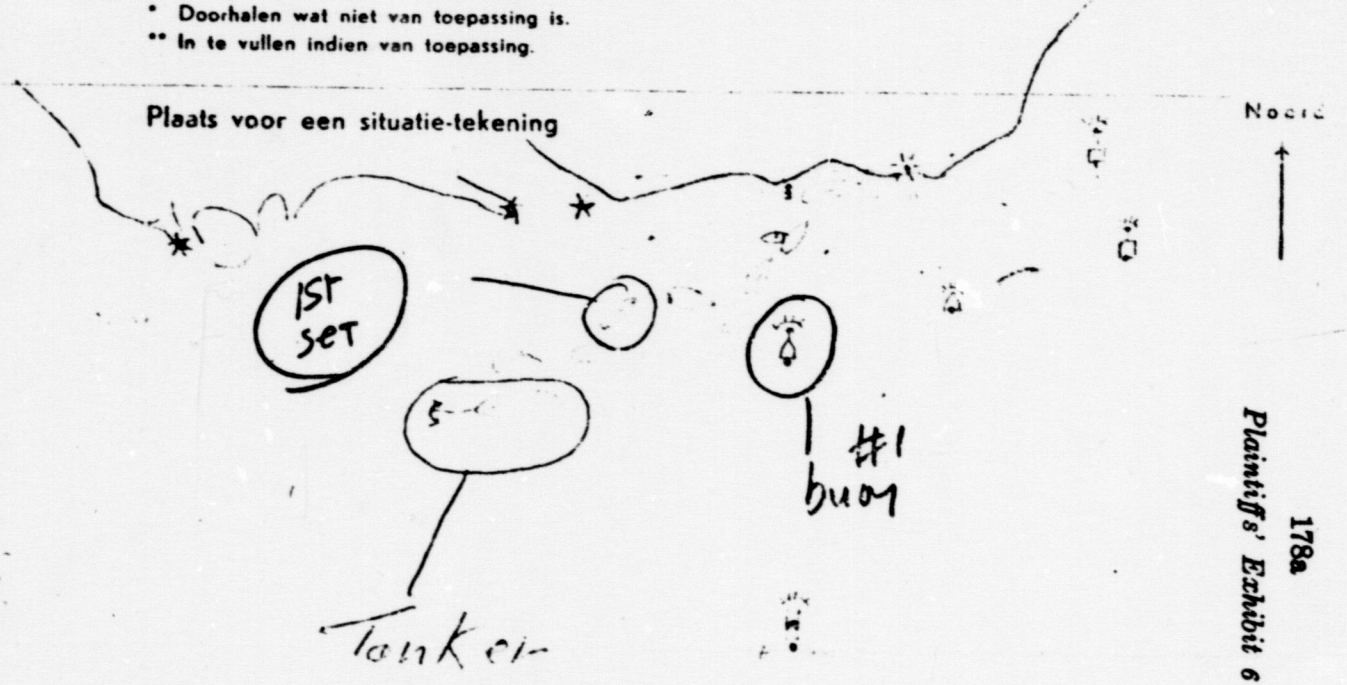
H.W. te Vlissingen/~~Terneuzen~~/~~Antwerpen~~ * 5h-15m

Aanwijzing peilschaal te ** – (aanwijzing met bijbehorende tijd)

Aanwezig op de brug tijdens het ongeval: Kapitein - Stuurman - ongeval.

* Doorhalen wat niet van toepassing is.
** In te vullen indien van toepassing.

Plaats voor een situatie-tekening



178a
Plaintiffs' Exhibit 6

NB.: Deze situatietekening dient alleen ter verduidelijking van de verklaring van de loods

Verklaring
Z.O.Z.

Ik verklaar hierbij het volgende:

Reed de 03.05 aan boord van het aldaar aanwezige stoomschip Hiawatha Eagle nabij een dwarsliggende tanker (British Statesman) in de nabijheid van Vlissingen te meren. Zicht volgens waarneming dik doch aan boord werden de misthoorns van Vlissingen horen en de lichten van de tanker nog waargenomen.

Na een orientatie van de positie van het schip werd de 03.32 H.H gegeven, even voordat de dwarsliggende tanker gepasseerd was. De sleepboten van de S.H.V. konden niet beginnen met assistentie om op de baren de lijnen. Te 03.53 werd V.H gegeven en de 03.55 gestopt waarbij de koers van 90° naar 80° veranderde en het schip door de opkomende vloed noord en de vloedstroom naar de walkant gedreven werd. Te 03.59 werd L.H en hard S.B. roer gegeven waardoor de positie van het schip verbeterde en het schip van 080° naar 095° koers veranderde. Boei no 1 was toen nagenoeg recht dwarsuit en in zicht. Om niet door de vloedstroom over deze boei gedreven te worden werd de 04.05 gestopt en V.H. gegeven. De koers lag toen nog van 90° naar 95° en de snelheid was weer gering. De sleepboot van de S.H.V. aan stuurboord van het schip over de nemen. In dit geval kwam de sleepboot aan bak

Plaintiffs' Exhibit 6

Plaintiffs' Exhibit 7

TYPED STATEMENT OF PILOT WITH ENGLISH TRANSLATION

(See Opposite) ☞

LOODSVERKLARING

van de loods ~~Binnendienst~~ Zeedienst * der 1 klasse L.J. Pennarts

Standplaats Vlissingen

Aard van het ongeval: Aan de grond komen Pewoesten het baken van de Schone Vaardin.

Gegevens van het Schip

Naam van het schip: s.s. (NE) Western Anglo Nat.: Lib. BRT.: 14313

Naam van de kapitein: Theodorou Lading: Ballast (soort)

Diepgang vóór: 11'-7" achter 19'-6" Lengte en breedte v/h schip: 574'6"3/8 / 76'-0"

Soort machine ~~stoom~~ motor ~~turbine~~ * Turbo electric. Schroeven: enkel/~~dubbel~~; rechts/~~links~~

Vaart van het schip bij: VK 10.5 ; HK 7 ; LZ 5 ; ZLZ 3

Kompas: ~~magnetisch~~/giro * Deviatie bij koers - volgens opgave - volgens eigen waarneming -

Radar aan boord en in gebruik ja/~~neen~~ * VHF aan boord en in gebruik ja/~~neen~~ *

Loods aan boord gekomen: 03.45 Nabij buitenhaven (plaats en tijd)

Schip geassisteerd door - sleepboten; vóór: - ; achter: -

van - (plaats) tot - (plaats)

Gegevens betrekking hebbend op het ongeval

Zicht: Moormatig Wind: Zuid 5/6 (richting en kracht)

Zee: ** Pewoesten baken Schone Vaardin

Nauwkeurige plaats van het ongeval: in Sr/Witte sector. Tijd: 04.23 Datum: 14-12

Vaart van het schip, even vóór het ongeval:

Tij, tijdens het ongeval: Eb; Vloed; ~~Stil-water~~ *

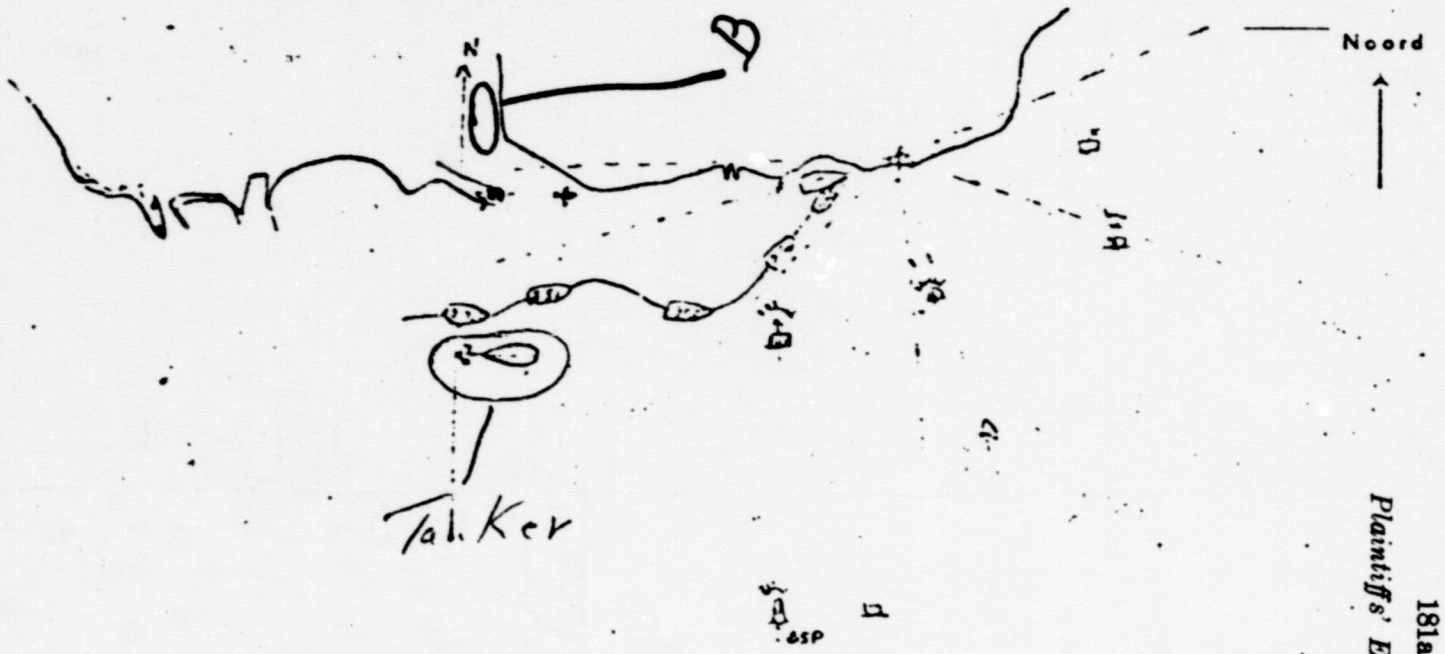
H.W. te Vlissingen/~~Terneuzen~~/Antwerpen * 15u-15u

Aanwijzing peilschaal te ** - (aanwijzing met bijbehorende tijd)

3/20/73

Aanwezig op de brug tijdens het ongeval: kapitein-[illegible]-oefenloods

* Doorhalen wat niet van toepassing is.
** In te vullen indien van toepassing.



N.B.: Deze situatietekening dient alleen ter verduidelijking van de verklaring van de loods

Verklaring
Z.O.Z.

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Plaintiffs' Exhibit 7

Ik verklaar hierbij het volgende:

werd te 03.45 aan boord van het turbo electrische stoomschip Western Maple nabij een ten anker liggende tanker (British Statesman) in de rede van Vlissingen en nabij de buitenhaven bemerkt. Zicht volgens waarneming dik doch aan boord werden de mistlampen van Vlissingen en de lichten van de tanker nog waargenomen. Na een oriëntatie van de positie van het schip werd te 03.52 H.T. gegeven, even nadat de ten anker liggende tanker gepasseerd was. De sleepboten van de S.H.V. zouden naar buiten komen voor assistentie om op de haven te lopen. Te 03.53 werd V.A. gegeven en te 03.56 gestopt waarbij de koers van 90° naar 60° veranderde en het schip door de zuidelijke wind en de vloedstroom naar de walkant gedreven werd. Te 03.58 werd L.V. en hard S.B. roer gegeven waardoor de positie van het schip verbeterde en het schip van ±60° naar ±95 koers veranderde. Boei no.1 was toen nagenoeg rechtvooruit en in zicht. Om niet door de vloedstroom over deze boei gedreven te worden werd te 04.05 gestopt en V.A. gegeven. De sleepboot van de SHV was toen van plan een voortrom van het schip over te nemen. Intussen kwam er aan BB een kuster in zicht welke 3 korte stoten gaf en door ons ook met 3 korte stoten beantwoord werd. Even later naderde er aan SB ook een afvarend schip waardoor ik te 04.10 besloot weer te stoppen. De sleepboot van de S.H.V. wilde onder deze omstandigheden niets aanpakken en verwijderde zich weer van het schip. Te 04.11 werd weer V.A. gegeven nadat de kuster aan BB gepasseerd was doch toen bemerkte ik dat we door de wind al zo naar de walkant gedreven waren met een koers op ± 45° en de Schone Waardin recht vooruit dat ik te 04.12 stopte en wilde proberen met VV (04.12) en hard S.B. roer van deze walkant af te komen. Aan de beweging van het schip t.o.v. de wal zag ik dat dit toch niet zou lukken en besloot onmiddellijk weer V.A (04.13) te geven. De wind zorgde ervoor dat het voorschip tegen de wal aangezet werd en ondanks dat de machine achteruit bleef draaien (04.15 LA - 04.16 H.A - 04.16 V.A) kwam het schip De Westen de Schone Waardin evenwijdig aan de walkant te liggen. Te 04.23 werd de machine gestopt en de voorsleepboot vastgemaakt. Te 04.26 werd L.V. gegeven terwijl de voorsleepboot aftrok. De achterboot maakte toen ook nog vast en ondanks het aftrekken van de boten wilde het schip wel enigszins vooruit komen doch niet van de walkant afgetrokken worden. Te 04.35 werd gestopt en met machine H.A (04.38) en L.A (04.42) kwam het schip weer naar achteren doch ook weer niet van zijn plaats af en te 04.50 werd gestopt na vanuit de S.H.V. bericht gekregen te hebben dat de schroef waarschijnlijk beschadigd was. Heb nog getracht met beide boten van achteren het schip te laten aftrekken en de derde boot van de S.H.V. was ook nog onderweg.

terwijl de boten van Lotser en Rijkhuizen ook nog uitgevaren waren en tegen Lloyd's open form het schip wilden aftrekken doch de kapitein wilde hier niets van weten en eerst zijn maatschappij contacten. Na N.V. werd besloten het schip te ontballasten.
Te ±17.00 werd het contract getekend voor het aftrekken van het schip waarna het te 18.10 vlot raakte en voor onderzoek en reparatie naar de Sluishaven gesleept werd waar te 22.00 in het Prins Willem III dok werd afgemeerd.

w.g. L.J. Pennarts

Voor eensluidend afschrift,
de Commissaris v/h Loodswezen, enz.,

J. Meyne.

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Plaintiffs' Exhibit 7

Translation from Dutch. 6122/2/70.

PILOT'S REPORT.

of the Pilot, River Service, First class L.J. Pennarts
Station Flushing.

Nature of the accident: Grounding to the West of the beacon the Schone Waardin.

Details of the ship.

(Name of the ship: s.s. Western Eagle Nat: Lib. GRT: 14313
(Captain's name: Theoderou Cargo: Ballast.
(Draught forward: 11'-7", aft 19'6". Length and width of the ship: 574'6"3/8 78'-6"
(
(Type of engine: Turbo electric. Propellers: single, righthand.
(Speed of the ship at: full speed 10.5; half speed 7; slow speed 5; dead slow speed 3.
(Compass: Gyro. Deviation on course -
(Radar on board in use - yes. VHF on board and in use - Yes.
(Pilot embarked: 03.45 near outer harbour.
(Ship assisted by - tugs; forward: -; aft: -.
(from - to -

(
(
(Visibility: Very moderate Wind: South 5/6
(Accurate place of the accident: To the West of the beacon Schone

Waardin in Green/White sector.

Particulars relating to the accident

Speed of the ship just before the accident: - Time: 04.23
Date: 14.12.

Tide at the time of the accident: Flood.

High water at Flushing 15.15 hours.

Present on the bridge at the time of the accident: Captain - Mate - Helmsman - Pilot.

See original document for sketch.

I herewith declare the following:

Embarked at 03.45 hours on board the turbo electric steamship Western Eagle near a tanker (British Statesman) lying at anchor in the Roads of Flushing and near the outer harbour. According to observation from the shore visibility was dense, but on board the fog lights of Flushing and the lights of the tanker could still be seen. After an orientation of the position of the ship half

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Plaintiffs' Exhibit 7

astern was given at 03.52 hours, shortly after the tanker lying at anchor was passed. The tugs of the S.H.V. were to come outside for assistance in order to enter the port. At 03.53 hours full astern was given and stopped at 03.56 hours, whereby the course altered from 90° to 60° and the ship was drifted towards the shore by the Southern wind and the flood current. At 03.58 hours slow ahead and hard starboard rudder was given, by which the position of the ship improved and the ship altered course from approx. 60° to approx. 95° . At that time buoy No.1 was almost dead ahead and in sight. So as not to be drifted across this buoy by the flood current we stopped at 04.05 hours and gave full astern. The tug of the S.H.V. then intended to take a forward hawser from the ship. Meanwhile a coaster came in sight on port side, which gave three short blasts, to which we also replied with three short blasts. A little later a ship proceeding down river also approached on starboard, on account of which I decided again to stop at 04.10 hours. Under these circumstances the tug of the S.H.V. did not wish to accept anything and moved away from the ship again. At 04.11 hours full astern was given again, after the coaster had passed on port side, but then I noticed that the wind had drifted us already to the shore on a course of approx. 45° and the Schone Waardin dead ahead, so that I stopped at 04.12 hours and intended to attempt to move away from the shore with full ahead (04.12) and hard starboard rudder. By the movement of the ship in relation to the shore I saw that this would not succeed and I immediately decided to give full astern again (04.13). The wind saw to it that the foreship was put against the shore and in spite of the fact that the engine continued working astern (04.15 slow astern - 04.16 half

astern - 04.16 full astern) the ship came to lie in a parallel direction to the shore to the West of the Schone Waardin. At 04.23 the engine was stopped and the forward tug was made fast. At 04.26 slow ahead was given, whilst the forward tug was pulling. The after tug then also made fast and in spite of the pulling of the tugs, the ship did move somewhat ahead but could not be pulled free from the shore. Stopped at 04.35 and with engine at half speed astern (04.38) and slow astern (04.42) the ship came astern again, but again not away from its position and at 04.50 we stopped after having been informed by the engine room, that the propeller was probably damaged. We still attempted to refloat the ship astern with both tugs and the third tug of the S.H.V. was also under way, whilst the tugs of Letzer and Dijkhuizen had also sailed and wished to refloat the ship under Lloyd's Open Form, but the Captain did not want to know anything about this and wished to contact his Company first. After High water it was decided to de-ballast the ship.

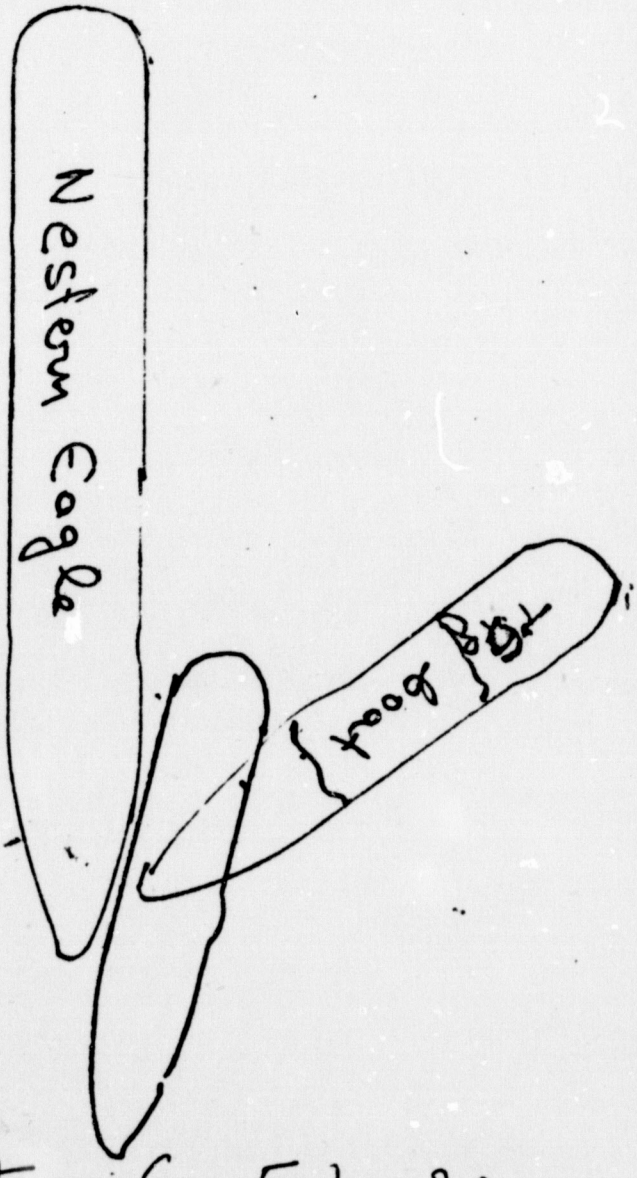
At approx. 17.00 hours the contract for refloating the ship was signed, after which she refloated at 18.10 hours and was towed to the Sloehaven for inspection and repairs, where she was moored in the Prins Willem III dock at 22.00 hours.

(sgd.) L.J. Pennarts.

For true copy,
The Head of the Pilotage Board, etc....
J. Heyse.

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Plaintiffs' Exhibit 7

Plaintiffs' Exhibit 9



Litras Ex. 5 for Ident.
7/19/71

Plaintiffs' Exhibit 11

BAKER, NELSON, WILLIAMS & MITCHELL

FAIRMONT SHIPPING CORPORATION,

VS

INTERNATIONAL OIL COMPANY

DEPOSITION

MR. SMITH: The date is February second, 1970, and we are going to tape record the testimony of two witnesses in the stranding of the WESTERN EAGLE.

We are at room 23 in the Britannia Hotel, Vlissengen, Holland.

DIRECT EXAMINATION

By Mr. Meshel

Would you tell the Captain that I will ask him questions and he may not ask you the interpreter questions but must merely attempt as best he can to answer my questions.

Would you tell the Captain that we will now put him under oath, swear him as we say in our country.

MR. MESHEL: You want to do that Mr. Smith?

MR. SMITH: Do you solemnley swear to tell the whole truth, nothing but the truth, so help you God?

INTERPRETER: He says - Almighty God, that he will tell the truth and nothing but the truth.

MR. SMITH: Now, Captain, would you put your right

hand up and we'll swear you as the interpreter.

Do you solemnley swear to translate from English into Dutch and from Dutch into English to the best of your ability?

INTERPRETER: I shall.

VOICE: Thank you.

BY MR. MESHEL: Mr. Smith, I assume that all the usual stipulations will be waived except as to the form of the answer?

MR. SMITH: I, I don't think we should waive any stipulations --

MR. MESHEL: You want that on the record?

MR. SMITH: Yes.

MR. MESHEL: Fine, put it on. Well you rather not, you rather conduct this just as if it were in trial, all the usual objections.

MR. SMITH: As far as the objections, yes, I think, I think it would be necessary. I want to reserve my right to object to anything at the trial that's, that's in this record.

If there's an, an error in the translation I would like to point that out to the court.

MR. MESHEL: Very good.

Q: MR. MESHEL: Would you please state your name

for the record and your home address.

A. Danker Schuiling.

INTERPRETER: He lives in the Decker Street, 17-Scheuber--

Q: And what is your age?

A: Fifty-four years of age.

Q: And what is your present employment?

A: He has been an invalid for a year now.

Q: Mr. Schuiling, I notice you have before you a piece of typewritten paper. Is that a statement that you gave concerning the stranding of the S.S. WESTERN EAGLE?

A: That is his written statement dating back to 15 and 16 December, 1969.

MR. MESHEL: Let the record reflect that I have given to Mr. Smith what I take to be an accurate translation of the statement which the Captain has before him in the Dutch language, obviously subject to verification by your interpreter or expert.

MR. MESHEL: Now Captain, you may use this statement if you wish to refresh your recollection.

Q: For how many years have you been going to sea?

A: Since I was a child I've been on the water. He

has been employed as Deck Captain in the S.H. V. Company since 1949.

Q: What licenses do you hold?

A: He has certificate for the inner waterways, including the Wesser Scheldt River.

Q: And is that the river in which the WESTERN EAGLE ultimately stranded?

A: He said that was the, the channel for the deep draft ships.

Q: And for how many years have you been a tug Master?

A: For twenty-one years.

Q: Now during the events of the stranding in December of 1966, specifically on December fourteenth, 1969, by whom were you employed?

A: He was employed by the S.H.V.

Q: And would you give us the full name of that Company and its address as it was in 1969.

A: Steeljolen Haldelsvereniging, Utrecht.

Q: Now, in December of '69 what tug were you the Master of?

A: He was Captain of the tug SOPHIA, he had been the Captain on board the ship since 1962.

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Q. Could you give us the dimensions of the SOPHIA?

A. Length thirty-six meters.

Q. Ask him about the over-all length.

A. Yes, over-all length.

Q. And the beam?

A. Seven meters and eighty centimeters.

Q. And what is the least amount of draft that that vessel could safely sail in?

A. About four meters.

Q. I show you a photograph of a vessel which purports to be the SOPHIA. I ask you whether that is an accurate portrayal of the tug SOPHIA as it existed on December 14th, 1969?

A. Exactly, it is and, it's a wonderful picture.

Q. All right Mr. Smith, since we have no court reporter here, I show you this photograph and ask you if you have any objection to us marking it at this juncture, both initialling it on the reverse side?

MR. SMITH: Why don't we just mark them as exhibits on this deposition?

MR. MESHEL: Yes, but I thought for purposes of accuracy that we would mark it as a defendant's exhibit 1 and

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at the same time both of us initial it.

MR. SMITH: That's perfectly all right.

MR. MESHEL: Very good.

Q. Is this a picture of the SOPHIA?

A. It is a, it's a true copy except for the flags.

MR. MESHEL: I refer to the reverse side of defendant's exhibit 1 and ask you whether or not the dimensions, equipment and other items contained on the back of this photograph are accurate?

MR. MESHEL: Let the record reflect that I am handing the Captain, defendant's Exhibit 1.

A. He says it's thirty-two meters on the picture postcard, whereas he's measured thirty-six meters.

MR. MESHEL: How do you know what the pulling power, the maximum pulling power of the tug SOPHIA was in December, 1969?

A. The pulling power was twenty-three tons, and the propelling power of the engines was fourteen hundred horsepower.

Q. On December 14, 1969, what was the crew of the SOPHIA?

A. On December the 14th, the SOPHIA had a complete

crew of four men. Consisting of Master, engineer, first AB and second AB.

MR. MESHEL: So that with yourself it was a complement of five men?

A: Four, all told.

Q: How was the SOPHIA equipped with radar on December 14th, '69?

A: The radar was complete.

Q: And what type of radar equipment did you have?

A: They have a Decca radar, nine-inch screen, with a magnifying glass.

Q: When magnified how many inches would it increase the picture?

A: Then the picture is enlarged to twelve-inch.

Q: Did this radar have any type of trade name?

A: It was called Decca.

Q: And did it have different ranges?

A: The Decca radar apparatus they have on board has ranges that vary from three-quarter of a mile to thirty-six miles.

Q: And what navigational equipment did you have aboard your vessel?

A: Radar, compass, VHF transmitter.

Q: Did you have charts aboard your vessel during, on December 14th, '69?

A: We have all charts on board of the river Westerscheld, the Easterscheld and of the North Sea.

Q: Could you indicate to us whether or not you had a familiarity with the area where the WESTERN EAGLE stranded?

A: The area where the WESTERN EAGLE stranded, he has sailed since, regularly, he has sailed regularly since 1932.

Q: Could you intimate for us in rough figures the number of trips that you've made past the area where the WESTERN EAGLE stranded?

A: It is difficult to say he says because he never counted the times he passed.

Q: Would he estimate that it might be over a thousand trips?

A: Many more times than a thousand.

Q: Now, Captain, what time did you board the tug SOFIA on December 14th, '69?

A: I was in the, he was on board at three-thirty a.m.

Q: And on board did you have, was the VHF turned on?

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A: When he came on board, the VHF was not switched on.

Q: Did you eventually switch it on or have someone --one of your crew members--switch it on?

A: He switched it on himself because he was the first man on board.

Q: And did you have occasion to listen to communication with regard to the S.S. WESTERN EAGLE?

A: It's usual, yes, he did, he had communication with the WESTERN EAGLE.

Q: Did he have occasion to ascertain whether or not the WESTERN EAGLE had aboard a sea pilot at some point in time?

A: Yes, then I switched on the VHF, then I heard the pilot on board of the WESTERN EAGLE ask for a river pilot.

Q: Did you ever ascertain what nationality or what type of sea pilot was aboard the WESTERN EAGLE?

A: Normally it's, or usually, it's a Belgian pilot and then the Belgian pilot asked for a river pilot and he uses to make his question, channel 14 on the VHF.

The station he calls is Flushing radio.

Q: Did you hear what purported to be the Master of

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the WESTERN EAGLE, receive a reply, to his request?

A: the Captain did not receive a reply but the pilot did.

Q: What was that reply?

A: Flushing radio asked to report again when the WESTERN EAGLE was passing number, W-10 buoy.

Q: Were you eventually contacted by the harbor pilot aboard the WESTERN EAGLE?

A: When the sea pilot had been replaced by the harbor pilot, the pilot of the WESTERN EAGLE called tugs for assistance.

Q: And I now show you a nautical map which purports to show the Flushing area and ask you, let us mark this for identification in the upper left hand corner, as defendant's Exhibit 2 for identification. And I'll identify it for the record as chart 1533.

Apparently dated September 19th, 1969.

Q: Now Captain I show you this map and ask you whether or not that chart indicates the approximate area where the SOPHIA lay as you listened to the communication you just described.

A: Yes.

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Q: All right, would you indicate on the map by circling that portion of the map in ink, we'll use black ink, as precisely as you can, the exact position that the SOPHIA lay when you first heard the communications.

A: The SOPHIA was lying at the end of the port as far up, as far as possible inside.

Q: Now, could you make that line a little darker, the black line, put a circle around it.

Q: Now what is the name or description given for that general area? Which you have circled in black ink.

A: That is our usual mooring. That's a jetty where all barges may discharge or load oil. The berth is controlled by the port of Flushing.

Q: As long as you mentioned that, what is the official name given to the port officials that you referred to?

A: He only knows it by name of M. V. Haven von Vlissingen.

Q: Were you connected in any way, Captain, on December 14th, 1969, with that port entity?

A: On the 14th December, in the middle of the night, there's nobody there.

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Q: Was he employed by or connected with, any way, with the port trust, is what I wanted to know, in December '69.

A: He has nothing to do whatsoever with the port officials, he is only employed by S.H.V.

Q: And this was true on December 14th, 1969?

A: That he has been true since 1932, 'til December 1969.

Q: In the normal course of business, are you contacted by the port entity in connection with the tug assistance?

A: No, only the S.H.V. office.

Q: The area immediately outside, the area which you've marked with a black circle, is that known as the outer harbor?

A: When we are not working, is known as the outer harbor.

Q: Now when were you first, at what time were you first contacted by the port pilot in connection with the WESTERN EAGLE?

A: He was called at four o'clock, then he watched his radar screen, then he saw the ship due south off the outer harbor.

Q: Had his radar been on prior to four o'clock?

MR. SMITH: I notice that you're asking a lot of

leading questions, and I haven't made any objection to it, but I think you should--

MR. MESHEL: All right.

MR. SMITH: --rephrase your question so--

MR. MESHEL: Sure, let me throw that question out--

MR. SMITH: I don't particularly care on insignificant questions but I think you're getting into some significant areas now.

MR. MESHEL: Right, fine.

Q: Can you estimate for us how long your radar had been on?

A: The radar had been switched on then for fifteen minutes.

Q: When you said four o'clock, is that a.m. or p.m.?

A: Four a.m.

Q: Now you testified that the WESTERN EAGLE was south of you. Could you indicate in green pen the position of the WESTERN EAGLE in connection with your position in the area circled in black pen at 0400 hours?

INTERPRETER: Would you repeat the question?

Q: Would you indicate the position of the WESTERN EAGLE on defendant Exhibit 2, at 0400 hours, as you testified it was south of you.

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A: Rough sketch, my sketch, but we were not sure at that moment that it was the WESTERN EAGLE. We expected her to be the WESTERN EAGLE because there was hardly any shipping, because Flushing radio had told, had broadcast dense fog.

Q: What direction was the WESTERN EAGLE heading at that point? At 0400 hours.

A: When he saw the vessel which he thought to be the WESTERN EAGLE at four o'clock, she was heading 90 degrees northeast.

Q: Did you see the WESTERN EAGLE on radar or visually?

A: He could not see the WESTERN EAGLE visually but very clearly on his radar screen.

Q: Could you estimate the distance that you saw her on the radar screen, the distance south of the red pierhead which I, I will circle in red ink, on plaintiff's Exhibit two.

A: According to my estimate, the WESTERN EAGLE must have been about two hundred meters south of the red pier light.

MR. MESHEL: And let the record be clear; I said plaintiff's Exhibit two which should be defendant's Exhibit two, the chart.

Q: Did you continue to observe what you took to be the WESTERN EAGLE after 0400 hours?

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A: When he saw him in front of the outer harbor, we began to make ready for leaving the harbor. And then I couldn't see the WESTERN EAGLE on the radar screen anymore because he was behind the -- the port installations.

Q: Would you describe for us the, best you can, the blip, the echo that you saw on your radar indicator at 0400 hours?

A: At four o'clock all his, he saw, was what he took to be the WESTERN EAGLE in front of the harbor.

Q: What, if anything, did you do after 0400 hours?

A: As soon as I got, message from the pilot, we started the engines and the sailors cast off and we steamed slowly out of the harbor. We had to take it easy because there was dense fog.

Q: Do you get, can you distinguish small blips as opposed to large blips on your radar?

A: He has a very fine radar and he can perfectly distinguish the dots.

Q: Was the, dots or blips that he got at 0400 hours, large, a large dot or a small dot?

A: It was a large dot. A very large dot. And that

proves that she was beam to.

Q: How long did it take you before you were abeam of the red pierhead?

A: About five to six minutes?

Q: And what, if anything, did you do when you, after you were abeam of the red pierhead?

A: When I came abeam of the red pier light I got accurate survey of the situation.

Q: How did you get that survey and what did you see?

A: He got the survey of the WESTERN EAGLE, or what he took for the WESTERN EAGLE, he didn't doubt it to be the WESTERN EAGLE. Because his ship was athwart in the channel heading about south. Then he also saw two echoes on his radar screen. Maybe about half a mile, to the east of the WESTERN EAGLE. And according to my picture, one of the echoes, kept to the port of the vessel and the other on starboard, WESTERN EAGLE.

Q: Did he have any sister tugs with him at this point?

A: At that moment there were no tugs assisting yet.

Q: Were there, to hiw knowledge, were there any other tugs in the vicinity?

A: The FREDERICK HENDRICK was there, belonging to the same company.

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Q: Where, where was the FREDERICK HENCRICK in relation to the SOPHIA?

A: The FREDERICK HENDRICK had left a little before and was about three to four hundred meters ahead of the SOPHIA.

Q: Before, or while leaving your tug station, did you contact the FREDERICK HENDRICK at all?

A: They are always in contact with each other?

Q: Were they in contact with each other on December 14th?

A: As usual, they were in contact with each other via channel 6, of the VHF.

Q: Did the SOPHIA proceed eastward behind what he took to be a WESTERN EAGLE?

A: I had seen the picture on the radar screen and saw that he was athwart in the fairway, there was no doubt left, it had to be the WESTERN EAGLE, and he steamed an easterly course.

Q: When he turned his vessel from south to east, how far was the stem of the SOPHIA from the stern of the WESTERN EAGLE; from the WESTERN EAGLE?

A: You mean the distance from the outer harbor to the WESTERN EAGLE?

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Q: Ah, take it, take it from the position of the--from the outer harbor, yes, from the outer harbor to the WESTERN EAGLE, the closest position of the WESTERN EAGLE.

A: The moment that I came outside the harbor, it must have been a mile and a quarter.

Q: What were the conditions, the weather conditions as you exited the mouth of the outer harbor?

A: When I left the harbor entrance, there was dense fog.

Q: Would you give us an estimate of the range of visibility? Maximum.

A: Well the visibility must have varied from thirty to forty meters.

Q: Was it flood tide or an ebb, a flood tide or an ebb tide?

A: It was flod tide.

Q: And based on your experience, Captain, would you estimate this to be a fairly strong flood tide or a weak flood tide?

A: Rather strong flood tide. What we call the run of the tide.

Q: And which direction was the tide heading?

A: The tide, the river, up, the tide was running inward, upriver.

Q: An that's a general easterly direction?

A: At that spot it's an easterly direction.

Q: O.K. And could you estimate the speed of the flood tide?

A: The strength of the tide must have been two, two and a quarter mile an hour.

MR. SMITH: Do you mean miles or knots?

MR. SMITH: Could you estimate it in miles or could you estimate it in knots, can you do both?

All right, put it in, are you talking about knots when you're, are you talking about nautical miles, talking--

A: He is talking about nautical miles.

MR. MESHEL: What were the wind conditions, if any, at the time that you were abeam of the pier, red pier head?

A: We were leaving and were abeam of the red light --there was fair breeze at least, according to my estimate, but I can't measure it, I have no, it must have been force six to seven.

Q: Is that a Beaufort scale measurement?

A: Yeah, it is.

Q: And what was the direction of the wind? Your best estimate.

A: The wind was from the south.

Q: Could you be a little more precise?

A: Due south.

Q: Now as you left the red pierhead, headed generally eastward, toward the WESTERN EAGLE, were you able to ascertain whether or not her heading had been changed from the position that you had seen her, seen a blip from, at 0400 hours?

A: Yes, when I came outside the harbor, I saw, according to the echo, that the ship was athwart, southerly course, but, of course, it drifted along with the flood tide.

Q: Was this low tide or high tide?

A: It was about 2 hours before high water.

Q: Were you able to see the coastline clearly on the radar?

A: On the radar he could clearly distinguish the coastline.

Q: And could you estimate for us what the distance was from the coastline to the sternmost portion of the WESTERN EAGLE as she lay on the southerly course at the time that you observed her on the radar?

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A: When I saw her for the first time on the radar, the position, when I saw her for the first time, then I was outside the harbor, then I saw the WESTERN EAGLE, at a distance of about a hundred to one hundred fifty meters away from the coastline.

Q: Now as you steamed toward the WESTERN EAGLE, where was the FREDERICK HENDRICK in relation to the SOPHIA?

A: The FREDERICK HENDRICK sailed about, four hundred meters ahead of us. So she was earlier near the WESTERN EAGLE than we were and when we arrived there, I lost track of the FREDERICK HENDRICK for a moment.

Q: Now would you put in green pencil, the position that, that you have just described of the WESTERN EAGLE, as she was headed in a generally southerly direction in the position you just described for us. (Witness complies)

Can you estimate the approximate time when you observed the WESTERN EAGLE in the position, the southerly position headed--

A: You mean the first time we saw the WESTERN EAGLE when the SOPHIA was outside--

Q: Yes. Well, I, I mean the time that he was headed easterly?

I'm not sure we are, and perhaps it's my confusion. Would you draw for us -- on the chart, the position of the WESTERN EAGLE at the time that you had exited the outer harbor and were just beginning to steam toward the WESTERN EAGLE.

Now, so that we have no confusion here, we have drawn two green arrows.

MR. SMITH: Three green arrows.

MR. MESHEL: I'm sorry, three green arrows. Ask him if the most easterly arrow is an incorr--, eh, eh, an incorrect position, or is that a later time?

A: This one is incorrect.

Q: All right.

A: The most easterly one is incorrect.

Here, at the moment when he was just outside the outer harbor.

Q: Is the arrow which is most easterly eventually wind up in that area?

A: The first arrow he has drawn, that is the indication of the ship when he saw for the first time with his naked eye the WESTERN EAGLE.

Q: All right, so that there's no confusion on the record, Captain, would you draw a green A next to the first

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position you've plotted at the mouth of the outer harbor?

A: To come back to the first position, that might have been fifty meters to the east of it. He saw on the radar the pierheads clear of the WESTERN EAGLE when he saw --

Q: Now the second position, which is east of the position A, would you label as position B.

Now, once again, I assume this is the position of the WESTERN EAGLE at the time the SOPHIA was heading eastward in the general vicinity of the mouth of the outer harbor.

Were you in the general vicinity of the mouth of the outer harbor?

A: They had left the outer harbor, heading east.

Q: Now position C, would you describe for us what that position represents?

A: The position I have just marked "C", that the spot when I arrived and could see with my naked eye, the WESTERN EAGLE.

Q: Now between position A and position B, did you receive any instructions from the pilot aboard the WESTERN EAGLE?

A: I received orders from the pilot in the time, in the time that I was proceeding from the outer harbor toward

position B.

Q: And was the vessel already in position B at the time you received these instructions?

A: Then the ship was in that position.

Q: Now was this the second set of instructions that you received from the pilot?

A: That was the second time he contacted the pilot.

Q: And what was that time once again?

A: The first time he contacted the pilot, it was around four o'clock, it was when the ship was abeam or due south of Flushing, the outer harbor.

MR. MESHEL: Now you translated that the, he called the pilot, who called who, did the pilot call him at four hundred hours or did he call the pilot --

A: No, he did not call the pilot.

Q: Did the pilot call him?

A: The pilot called him.

Q: Now what were the set of, second set of instructions when the WESTERN EAGLE was at position B?

A: At position B he received instructions -- he had arrived, I should say, we received instructions, the FREDERICK

HENDRICK and SOPHIA but, that the FREDFRICK HENDRICK should make fast to the bow, and the SOPHIA to the stern of the WESTERN EAGLE and that the ship would be swung to starboard first, position B.

Q: Did the pilot indicate what portion of the bow or what portion of the stern, you tie up--the tug, was to tie up on --?

A: The instructions for the FREDFRICK HENDRICK were for starboard or port, he doesn't know exactly, but he presumes that the FREDFRICK HENDRICK had to make fast on port bow and the SOPHIA received instructions that we have to make fast from starboard quarters.

Q: Intimate to us when, at what point in time you received the second set of instructions, from the pilot aboard the WESTERN EAGLE?

No, could you indicate the time that you received the second set of instructions?

A: The second set of instructions must have been around a quarter past four.

Q: Once again I'm going to have to ask to pause.

Q: Now what if anything happened after 0415, you know, captain, in relation to the WESTERN EAGLE?

A: The last set of orders had been given by the pilot, to make fast, I received instructions that the

SOPHIA had to wait to make fast aft. This with a view to the swing to starboard.

Q: Was the SOPHIA connected at any time with the WESTERN EAGLE up to this point?

A: They had contacted with the WESTERN EAGLE since four o'clock --

Q: Were you physically connected with the WESTERN EAGLE by tow lines with the WESTERN EAGLE up to this point?

A: No.

Q: What if anything happened after the pilot advised you of the maneuvering of the Western Eagle?

A: When I had arrived there, I was about thirty metres from the midship of the WESTERN EAGLE, and the position of the SOPHIA. Be as precise as you can, and I draw for you in the upper right hand corner, a north-south-east-west scale.

MR.SMITH: North, east, south and west, irrelevant, I think the same, isn't that right?

INTERPRETER: Beg pardon?

MR. SMITH: You don't use north, east, south and west in your language, word for it?

INTERPRETER: No, no, captain, we may say oest, but we say north, south, oest and west.

Q: Now, I notice you have drawn a larger ship and a small ship. I take it the larger ship represents the WESTERN EAGLE.

A: That is correct.

Q: And I take it, that that's not to scale.

A: The drawings are not correct. The WESTERN EAGLE would have to be of half a million tons.

Q: Now you've drawn a WAL, does that stand for anything?

A: That stands for WESTERN EAGLE.

Q: No, I'm referring to the WAL --

A: That means shore.

Q: Now are you familiar with the shore line as it existed in December 1969. As it existed due north of the stern of the WESTERN EAGLE. In the position you've just plotted there? Yes or not.

A: Yes.

Q: Could you describe for us as best as you can, being as precise as you can, exactly what the shoreline consisted of?

A: The coastline has consisted for years of stone and on top of it, a lot of clay. But that was not to be seen at the moment.

Q: Was that because of the high tide?

A: That was, as a result of the fog, dense fog.

Q: Did the water at high tide cover any portions of the wall or rock area?

the wall or rock area?

A: The foot of the dike for about seven metres, and as the state of the tide was at that moment at a far height of about four metres the stones must have been visible.

Q: Now are these stones graduated at all, do they slope a bit?

A: Yes, they slope down.

Q: Could you estimate, could you estimate one, the angle of the slope, and two the length of the slope. Approximately.

A: The length of the slope, must be ten to twelve meters, and then it extends in a horizontal direction.

Q: Draw it --

Q: Can you just estimate the extent, the length --

A: The length and slope of the dike, must be at least be ten to twelve meters, and then you get the foot of the dike that is covered by stones.

Q: Now as you lay in the position in which you've charted, which you will now mark as, defendant's exhibit three, for identification, could you position the, do you know the position of, or do you know the position of the FREDERICK HENDRICK?

A: Yes, I know where the FREDERICK HENDRICK was but not exactly, its position.

Q: Could you give us an approximate.

A: He says it's just an estimate for him, a guess because the

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FREDERICK HENDRICK was on the port side of the WESTERN EAGLE.

Q: All right, she was the port side of, about the approximate area the vessel's stem.

A: He can't say because he couldn't see the FREDERICK HENDRICK.

Q: Now could you estimate the distance from the WESTERN EAGLE to the, forwardmost portion of the SOPHIA in the time that you lay in the shadow of the vessel.

A: About thirty metres.

Q: Could you estimate the time at this point, the time .

A: The time must have been between 0410 and 0420.

Q: Now did you have occasion to look at your radar at about this time?

A: He had an occasion for it, but as he was so close to the ship, it wasn't worthwhile.

Q: Prior to coming next to the WESTERN EAGLE, did he have occasion to view the channel east of the WESTERN EAGLE?

A: When he was on his way from the outer harbor to the WESTERN EAGLE, then he had plenty of occasion to have a look - then he had a general survey.

Q: Did he have occasion to notice any vessels in addition to the vessels set forth in this diagram?

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A: I had observed that there were two other ships coming down river.

Q: And in what direction were they heading?

A: They were steering westerly.

Q: And what positions were they in the channel?

A: The positions of the down coming ships, the first one, kept to the right side of the channel, and the second one kept the wrong side of the channel/

Q: Did the coasters eventually pass the WESTERN EAGLE?

A: Yes.

Q: And would you indicate the positions of these coasters on the, this diagram, defendant's exhibit three - they ultimately passed the WESTERN EAGLE. Now would you indicate - and indicate C-1 for the coaster that passed the WESTERN EAGLE first, and C-2 for the coaster that passed the WESTERN EAGLE at a later time.

Q: Now, captain, can you estimate the time at which coaster number one, the bow of coaster number one, passed the bow of the WESTERN EAGLE?

A: That must have been between 0410 and 0420.

Q: Now you testified before that the WESTERN EAGLE, began to go astern, is that correct?

A: At that time the WESTERN EAGLE's engine was going astern.

Q: Can you estimate the time difference, from the time that the WESTERN EAGLE went astern, until the bow of the coaster number one was past the bow of the WESTERN EAGLE?

A: That time is difficult to estimate because when I got near the WESTERN EAGLE she was going astern already. for then the first coaster had passed already and immediately after that the second coaster passed.

I had observed in the meantime that the ship was very close to the shoreline. According to my estimate that must have been not more than twenty-five to thirty metres.

Because I was amazed that the coaster managed to get around the WESTERN EAGLE's stern.

Q: You're talking now about coaster number two.

A: He's talking about coaster number two.

Q: Now, let's backtrack a second.

Did the Western Eagle commence to go astern before or after coaster number one passed its bow?

A: The coaster had not yet passed when the WESTERN EAGLE was going astern.

Q: I believe your testimony was that it was difficult to ascertain the time difference between the time the WESTERN EAGLE went astern and the coaster number one passed its bow, is that correct?

A: Yes, that's very difficult.

Q: Could you give us a very rough estimate, best, his best estimate --

A: He can make an estimate but it's very difficult as it was dark and dense fog.

Q: Was it a manner of minutes?

A: It be a matter of minutes.

Q: Now what was the time difference between the passing of coaster number one about the bow and coaster number two about the stern of the Western Eagle?

A: According to my view, not more than two or three minutes, and then everything passed.

Q: Can you estimate the distance that the WESTERN EAGLE's stern was from the wall, just immediately prior to her going astern?

A: He can't state before the moment she was going astern, for when he saw the ship the first time with his naked eye, the ship was already going astern.

Q: About how many metres, in front of the bow, did the coaster number one pass the WESTERN EAGLE?

A: The coaster number one must have been about thirty to forty metres off the bow of the WESTERN EAGLE.

Q: And what about coaster number two, how, how close was, that, stern and --

A: Was very close.

Q: Could you estimate the distance?

Plaintiffs' Exhibit 11
Deposition of Captain Schuiling—Direct

A: It was a matter of a few metres.

Q: Could you estimate the beam of coaster number two for us?

A: Vaguely because it was dense fog.

Q: Approximately.

A: Approximately nine metres.

Q: And could he visually see coaster number two.

A: Yes I could see the whole ship but vaguely.

Q: What physically could he see of coaster number two.

A: He saw two lights. The ship was loaded. Vaguely the whole ship.

Q: Now what if anything happened after coaster number two passed? Was the WESTERN EAGLE still going astern?

A: She must have, she probably had stern-way but her propeller was stopped.

In the meantime her position had changed.

Q: In what respect had her position changed?

A: The bow had come to port.

Q: Did this, did the bow, did you, did you observe whether the bow came to port gradually or quickly or what?

A: It's difficult to say because it was night, dark and foggy.

Q: Did the bow come to port before, during or after the sternward movement of the WESTERN EAGLE.

A: As far as I could see, it came to port, when going astern.

Q: Could you indicate to us with blue arrows the position- I should say the direction that the flood currents or the flood tides -- were working in relation to the WESTERN EAGLE?

And could you indicate in relation to the bow of the WESTERN EAGLE what portions if any would be working against the bow of the WESTERN EAGLE.

Ah, strike that question, strike that question.

Q: Could you indicate to us by drawing the position change of the Western Eagle after the bow swung to port as you said. And again we're indicating this for the record on defendant's exhibit three.

And would you label that WESTERN EAGLE position two. In black ink.

Q: Would you also indicate, captain, the swing of the vessel by the use of arrows, as you saw it.

Captain, I take it, Captain, that the swing would be to the port?

And would you indicate with an arrow the direction that she swung.

Q: Now what if anything, could you indicate to us as best you can, captain, what time it was when the vessel ultimately

came to position two?

A: Position two was reached and maybe she drifted a little more towards the shore. That was around 4:15, :16 or :17.

Q: Would you indicate for us in red ink on defendant's exhibit three, the direction of the wind, if any?

With an arrow.

VOICE : OK

Q: And put the word wind, in Dutch.

Now again --

A: Sorry, he marked it by south --

Q: All right, would you put the word wind in Captain, so we know --

Now, again, captain, was it still force - 6 of this time?

During position one, turning to position two?

A: During that position it was still a strong wind, force six.

Q: What if anything happened after the vessel arrived at position two?

A: When the ship was in position two, then the coasters had passed, then I asked the pilot to make fast to the ship, as I had observed that the ship was far too close to the shore.

A: The pilot gave permission to do so.

From the Western Eagle they lowered a nylon rope down. And my sailors made it fast to the tug.

Q: Now what, what was the approximate dimensions of this nylon rope?

A: The towing rope must have been ah, thirty to thirty five metres.

Q: Did you ever ascertain whether the rope was in, ah, seaworthy condition?

A: In my experience it was a good rope to tow the ship.

Q: What precise portion of the Western Eagle did you tied up with and what precise portion of the tug did you -

A: From the Western Eagle we made fast to starboard quarter aft through the chocks and to the tug midships to --

Q: And is this hook located in the centermost portion of the vessel?

A: The hook is located in the center most part of the ship.

Q: Now again could you estimate for us the time that you tied up with the Western Eagle for the first time?

A: The first time we made fast to the Western Eagle, I know exactly, that was 0420 A.M.

Q: Did you have any means of communication with your crew on the deck?

A: He has contact with his crew on deck by means of

an intercom.

Q: And is that what you had on the fourteenth?

A: That was operating perfectly on the fourteenth at the scene, but during making fast, I was with my stern to the Western Eagle's stern, and then my first sailor, warned me not to come astern any more for he was seeing the stones of the dike.

Q: Now captain could you plot on defendant's exhibit three the position of the Sophia at 0420 hours, on the fourteenth?

Captain, could you could make that a broken dotted line.

A: Oh yeah.

INTERPRETER: Nay, nay, nay.

INTERPRETER: He is not used to do such things he says.

MR. SMITH: Look, let's do it in green ink.

VOICE: All right, for the record we'll change this to --

MR. SMITH: May I do it --

MR. MESHEL: Please.

Started, dotted green ink.

MR. MESHEL: And captain, would you label that at the sternmost portion, Sophia, with an S, just put a S, S.

MR. MESHEL: What if anything happened after 0420, after you connected with the Western Eagle's line?

A: After making fast I started to go slowly ahead, to see that the lines got tight and gradually increased the

power of the engine, he was pulling about four to five minutes. He gave full speed for about four to five minutes, and then the line parted.

Q: Now, to your knowledge, was any other tug assisting you during this --

A: The Frederick Hendrick had at that time made fast to the Western Eagle's bow, and that was all.

Q: Were you in contact with the Frederick Hendrick during this operation?

A: He has been in contact with the Frederick Hendrick all the time and also with the Western Eagle.

Q: Now, what if anything happened after the tow rope parted?

A: When the tow line had parted, I informed the pilot straightaway that the line had parted and made fast to the Western Eagle straightaway again, to the stern of the Western Eagle at the same place. This time I took two nylon hawsers.

Q: In the normal course of business how many tow ropes would you normally use to tow a vessel to the bunker port?

A: That depends on the quality of the ropes.

Q: What about the type of rope that you had with you, the nylon rope?

A: According to my experience, it was a rope which was good enough to, to safely --

Q: Did you attach two fresh ropes?

A: He knew that he was connected with two fresh ropes.

Q: What if anything happened after you connected with two fresh ropes.

A: Well the ropes held him fast. We started to pull with all force. With all power. But we couldn't get any movement in the ship. And that's what happened with the first rope.

Q: Was the Wes--, was the FREDERICK HENDRICK to your knowledge towing with you again the second time?

A: The FREDERICK, he was in contact with the FREDERICK HENDRICK and he had asked her not to pull to the bow to get the stern easier off.

Q: And the time that you were towing the first time, at 4:20, for, for the four to five minutes that you talked about, what direction was the SOPHIA heading as it was pulling?

A: When he was pulling at the WESTERN EAGLE's stern, the SOPHIA was heading due south.

Q: How many knots does the SOPHIA make at full speed?

A: At full speed she does approximately eleven knots.

Q:At half speed.

A: About seven.

Q: Did you eventually assist in the refloating of the SOPHIA, of the WESTERN EAGLE?

A: Yes.

Q: How long did you tow, for what length of time did you tow, the second time you attempted to pull the WESTERN EAGLE?

A: For a whole day.

Q: And was that again in a generally southerly direction ?

A: In a southerly direction to get her off the dike.

Q: Did other vessels or other tugs assist you?

A: After making fast for the second time and the ship did not move, the pilot warned the FREDERICK HENDRICK to make fast to the stern of the WESTERN EAGLE as well.

And when we didn't succeed, I had informed the office in the meantime -- we warned the tug of the Union, and she also joined us but the captain refused to accept further assistance.

Nor on conditions of the normal towing assistance.

Q: Can you estimate for us the position on exhibit number two in green ink, where the Western Eagle lay as you attempted to pull her off the rocks.

Before captain, before the rope parted.

Q: And what position, what direction was the bow headed captain?

A: She must have been heading about eighty, eighty five.

Q: Would you mark that as position D.

And can you estimate for us, the depth of the water, in fathoms, at the sternmost portion of the Western Eagle in position D?

If you can.

A: He says about four, four and a half metres.

Q: Now did you eventually see the propeller of the Western Eagle at low tide sometime after the fourteenth? or the keel?

A: When it was low tide we found that the stern of the ship was in, kind of breakwater, was sitting in the, in a kind of breakwater, he says a heap of stones, again, to break the current.

Q: Was there anything in any way obstructing the keel or the propeller of the vessel?

Q: Forward, forward of the keel.

A: The keel was completely disappeared into the stones.

Q: Would he attempt to draw for us as best he can, how the vessel looked in position D after he saw it some time after the fourteenth, at low tide?

Tell him I'm, tell him I would like to know what the keel of the ship looked like.

A: He said in the keel of the, of the ship, had disappeared in the --

Q: All right, well -- all right, all right, that's --

In your opinion was the propeller or the keel wedged into the dike?

A: As far as he could see at low water, at low tide, the ship was during her stern-way, half pushed into the stones and that is where she stuck.

Q: Can he estimate the distance from the sternmost portion of the WESTERN EAGLE to the top of the dike, as she lay in position D?

A: Approximately twenty metres.

Q: Is it your opinion based on your observations that the WESTERN EAGLE stranded before or after your rope parted, the rope parted?

A: According to him the ship stranded before they had a tow line across.

Q: And why do, what makes you think that?

On what do you, on what do you base that opinion?

A: He says I know this by experience because that rope, has parted -- that was the first point because normally if a ship is afloat, that rope can easily hold the ship and second thing;

When making fast his boys, his sailors, warned him not to come astern any more for they see the stones at the top of the dike and -- probably I was fifteen, twenty metres.

That's what the sailors estimated.

Q: At any time captain did you ever hear the WESTERN EAGLE give any blasts, at any time?

A: He never heard the WESTERN EAGLE blow at all.

Q: Is there any, ah, wreck in the vicinity of position D?

A: Yes.

Q: Could you estimate the distance between this wreck and position B?

A: At low water, I found that the wreck was about -- was about forty metres away from the stern of the Western Eagle.

A: And, what's left of the wreck is just a double bottom.

Q: I, I show you, a chart, don't interpret this, for the purposes of the record I'm referring now to exhibit B, attached to the plaintiff's answers to interrogatories, and ask you to look at that chart.

I refer you specifically to arrow marking a circular mark and ask you whether that is the position according to your estimates and your observations, where, which corresponds to position D on exhibit two?

A- yes, he says this position is rather according

to his memory but he said probably the bow of the WESTERN EAGLE was probably a little more to port.

Q: OK

MR. MESHEL: I have no further questions.

CORSS EXAMINATION BY MR. SMITH:

Q: What time did the rest of your crew board the vessel?

A: Between 0330 and four o'clock a.m.

Q: Who gave you your orders to board the vessel, you did on the morning of December fourteenth?

A: We were at home and then we get orders from the office.

Q: What office is that?

A. S.H.V. office.

Q: Do you know the procedure for ordering the pilot?

A: As far as he knows, that'd one by VHF.

Q: Is there any advance notice given by your office to the pilot?

A: And he says they, the pilot was not, in, from our office, he is, the service of the pilot authorities.

Q: How does the pilot know that a ship is coming in so -- pilot available?

A: As far as he knows, the sea pilot who is on board orders the harbor pilot for the ship's destination.

And I think the sea pilot gets orders from the captain to do so.

Q: Captain, at 0400, you left the outer harbor, is that correct?

A: That is correct.

Q: Where do you normally meet vessels that are going to dock in the outer harbor?

A: Normally west, west of the outer harbor.

Q: Would you take this blue pencil and show me where -- just put an X.

Let the record show that the captain instead of drawing an X has just drawn a straight line with an arrow on it.

Captain, would you circle that arrow?

And mark that position one.

Now when you received orders to meet a vessel, it is your custom and practice to proceed to that position that you've just marked one?

A: In most cases we usually make fast to the ships in that position.

Q: What is the reason for making fast to the vessel in that position?

A: Because, as a safety precaution, with a view to the tide, is that the correct position.

Q: My recollection of your testimony that you heard the sea pilot on the WESTERN EAGLE ask for a, a harbor

pilot at about 0330, is that correct?

A: Three thirty, you say.

It was later, it was later.

Q: How much later?

A: About fifteen minutes later.

Q: That would be about 0345

A: About.

Yes

It might have been five minutes later.

Q: Now, who gives you the instructions to proceed from the dock?

A: As soon as the pilot asks for assistance, we leave our buoy.

Q: Now at the time that the pilot requested your assistance, you were at the, at the dock, is that correct?

A: When the pilot asked for assistance for the first time, we were still lying alongside the double berth in the outer harbor.

Q: Now prior to that, I believe, your testimony was that the pilots were going to change off W-10 buoy, is that correct?

A: That is correct.

Q: Do you know when they changed pilots?

A: That must have been round three fifty, o three fifty.

Q: So that you knew that the ship was off buoy

W-10 about o three fifty, is that correct.

A: That was correct.

Q:q And you knew that the, the Western Eagle was going to need your assistance, and in the area of one, which you've marked on the chart in blue, is that correct?

MR. MESHEL: I, I object to the form of the question, that, that is not his testimony, I object to the form of the question, there's been no testimony to that effect in my knowledge.

I would ask you to rephrase the question.

MR. SMITH: I don't know what you're talking about.

MR. MESHEL: Well, I'm objecting to the form of the question in that it assumes a fact which may not necessarily be true, that they required assistance at buoy W-2.

MR. SMITH: That wasn't my question.

MR. MESHEL: Well maybe I misunderstood your question, maybe you could -- rephrase it.

MR. SMITH: I'd like to, like to go back and play it back so it's exactly the way it was.

MR. MESHEL: Fine

To my knowledge the only --

MR. SMITH: That isn't a question, Mr. Meshel, I specifically asked the question, that he, that he would know that the vessel would require assitance at position one, not at, at, at the buoy.

MR. MESHEL: All right.

MR. SMITH: Because he previously testified that this is the, this position one is the --

MR. MESHEL: You're quite right, you're quite right, I meant to say that he, that it is, that has, there's been no testimony, my knowledge, that he, knew that it would need an assistance at, at the area which has been marked in pen, you're quite right, it's, it's position number one.

To my knowledge as I understand his testimony, the first knowledge he had of assistance required by his tug was, slightly before 0400 hours while the Western Eagle's at the mouth of the harbor.

MR. SMITH: So you see he testified previously that it's normal to --

MR. MESHEL: That's right --

MR. SMITH: -- meet, meet the tugs at position one.

MR. MESHEL: That's right.

MR. SMITH: And assist 'em from there.

MR. MESHEL: That's quite correct and I, I agree with that. The, the question you asked is that he knew when the vessel was at that area which has been marked in ink, that the vessel needed assistance, and I believe that is his testimony.

MR. MESHEL: You can ask him whether he knew or not.

MR. SMITH: All right, let's --

MR. MESHEL: -- whether the question --

MR. SMITH: This is, this is cross-examination, I, I think you're well, muddying the waters here.

MR. MESHEL: Well I just don't want the captain to be confused.

MR. SMITH: Well he wasn-t, I don't think he will be confused.

MR. MESHEL: All right.

MR. SMITH: I'll ask the question over again.

MR. MESHEL: All right

Q: Captain, in a normal course, the, you would meet a vessel at position one, is that correct?

A: In normal weather conditions, that's where we make fast the ships.

Q: And why do you make them fast there, captain?

A: Because under normal circumstances, that's the best place for manuevering, and also because with a view to the drifting away with the tide.

Q: Now this particular case with the Western Eagle with a flood tide, it was important that the vessel be met before it got to the east of the outer harbor, is that correct?

A: Normally that would have been the case, but as the weather conditions and the weather reports were such, that in my opinion the ship would have anchored, would have

come to anchor.

MR. SMITH: In this particular case, though, you heard the conversation on your VHF between the sea pilot and the harbor pilot's office, is that correct?

A: I heard it, I heard the sea pilot asking for the harbor pilot.

Q: And your testimony before was that you knew the buoy, that the Western Eagle was at buoy W-10 at about 0350, is that correct?

A: I didn't have a look at my watch but it must have been around that time.

Q: Now how far is position one, captain, from buoy W-10?

A: I have drawn position one but I didn't know that the ship was there. So I can't give the distance between the ship and W-10 for you.

Q: Well that wan't my question, captain, the question was, what is the distance between buoy W-10 and the position you have marked on the chart, defendant's exhibit two, as position one.

MR. MESHEL: I take it you just want him to measure it --

A: That position must be about a mile off from where W-10

MR. SMITH: Would you measure it captain?

A: The position I have drawn is a little closer to buoy W-10, but that's a variable position.

MR. SMITH: It's approximately a mile or less, though. Is that correct?

A: A mile more or less is not correct. Let's start, let's say a quarter to a half a mile.

MR. SMITH: Is it normal position?

A: That's the normal position but it depends on wind and tide.

Q: Do you always wait captain for the harbor pilot to call for your assistance before you leave the dock?

A: Normally we get our instructions straightaway from the pilot, or we may get orders from the pilot on our way to the ship.

Q: Well how do you know when to leave the dock?

A: First we know when we are told from the office.

And second we wait for orders, till the pilot is called us.

Q: Now this particular case you knew that the ship was due in the area about 0400, is that correct?

A: According to the instructions from the office, which we got from the watchman, the ship had to be in that neighborhood at that time.

Q: Now thi,s on this occasion, captain, why didn't you go out to meet the ship?

A: First when the pilot was on board, it took sometime before we got information. And that's why I remained

in the harbor because the, the weather conditons were then were such that I expected that he would anchor.

Q: Did he give you any indication that he would anchor?

A: The pilot didn't talk about it.

Q: You have a very accurate radar on your tug, is that correct?

A: Absolute.

Q: You would have no difficulty getting from the dock to position one with your radar, would you?

A: He would not object to that in any way.

Q: How long would it take you to get from the outer harbor to the position where you first came alongside or first went alongside the Western Eagle?

A: Do you mean that physical, that he saw, it would his naked eye?

Q: Oh within close proximity to it, where -- well yes where he could see with his naked eye.

A: Between ten and fifteen minutes.

That's fifteen minutes past, four o'clock.

Q: How during the time that you were leaving the outer harbor, did you have the Western Eagle on your radar scope, continuously?

A: He didn't have a picture of the Western Eagle from the moment he left his berth 'til he got near the harbor entrance.

Q: Did you have a picture at any time, a picture of Western Eagle, at any time prior to the time you left outer harbor?

A: When he heard the pilot call for assistance he saw the echo of a ship just south of the outer harbor.

He didn't know it was the Western Eagle.

Q: At what, where was, where was the Sophia at that time?

A: Alongside the jetty, as drawn in this chart.

Q: Did you take a range and bearing on the vessel which you later identified as the Western Eagle?

A: Measuring, is a big word, but from his experience he judges that the Western Eagle must have been south of the harbor mouth about 200 metres, 200 metres off.

Q: So that position A which you've marked on the chart is too close in to the outer harbor. Is that correct?

A: Yes, that's right, he says but you can't draw it at a hundred meters.

Q: All right, now captain, how long prior to observing the Western Eagle at position A or approximately at position A, did you have your radar on, how long before --

A: It had been on for about fifteen minutes.

Q: Di you make any observations during that fifteen minutes?

A: He switched on the radar and tried to make observations, but there nothing to be seen.

Q: When did you first observe the Western Eagle, on radar?

A: That was a few minutes before four o'clock when the pilot asked for assistance.

Q: Whereabouts was your vessel at that point?

The Western Eagle that is.

A: Approximately inposition A. Due south of the harbor entrance.

Q: What was the strength of the flood tide?

A: Approximately, two to two and a quarter of a mile.

It's what they call the run of the tide.

Q: -- when you saw the vessel south of the outer harbor, were you concerned about her position at that time?

A: What do you mean with the word concerned?

Q: Did you feel the vessel was any, in any danger at that point?

A: Well the ship was off the harbor entrance, there was no danger whatsoever.

Q: And if the tugs had been out there at the harbor entrance, at position A, in position to take lines from the vessel or give lines to the vessel, the vessel could have been maneuvered safely into the, the harbor, is that correct?

MR. MESHEL: I object to the question as number one, argumentative, and number two, it's a rhetorical question, do you, if you have a question to, as to what, what would happen if, I don't think that's a proper question.

You want to ask him what actually happened, I have no objection. I object to that question, on the grounds it's hypothetical, it's immaterial and it's argumentative.

MR. SMITH: Well, I'd like to have an answer on the record, you can make your motion in court and have it -- stricken --

MR. MESHEL: A;; right, fine.

VOICE: Would you --

VOICE -- give me the question -

A: If we had been in position A, then, and the Western Eagle had given ropes to the tugs, I don't know whether it would have been safely manuevered into the harbor.

It's alot of risk attached to that.

I wouldn't have taken a decision of myse--, myself.

Q: Well you mean you wouldn't have taken a decision yourself, you mean you would not have maneuvered the vessel in yourself?

MR. MESHEL: Same objection.

A: In this weather conditions, he thought it was not the right thing to do, not the responsible thing to do.

Q: Now, -- did you notice if the Western Eagle had a radar on her?

A. He is not sure about it but he thinks the pilot said that the radar of the Western Eagle was not too good.

MR. SMITH: Strike that, as being unresponsive.

MR. SMITH: Just ask him to answer the question, the way it was put to him, did the Eastern Eagle have a radar?

Q: Had the Western Eagle a radar?

A: The Western Eagle had a radar.

Q: How many times, captain, have you gone in and out of, outer haven, outer harbor, to meet vessels in fog to bring them in. Probably he towed or guided thousand or even two thousand, into port, but in such dense fog he can't remember ever to have taken a ship into port.

Q: Under what conditions of visibility has he done it?

A: We towed her in, once we had, make fast to a ship, and when she was in the proper position for entering, with a visibility of about a hundred meters.

Q: On this occasion did you not have at least a hundred meters visibility?

A: In this case the visibility was about forty to thirty eight meters.

Q: Captain, this statement which was handed to me at the beginning of this deposition. I'd like to have this marked as an exhibit, would you like to mark it as your exhibit, make it plaintiff's exhibit A, then.

I notice captain it's undated, it says December 1970, but it doesn't have a date on it, do you recall when you signed that in December?

A: He doesn't remember whether it was December. He has been in hospital for a year. He has been in two different hospitals, one in Flushing and one in Rotterdam.

Q: Was this signed in December of 1970?

A: No.

Yes

Q: This was the year after the stranding of the Western Eagle, is that correct?

Well didn't the Western Eagle strand December fourteenth, 1969?

A: Yes.

Q: I, I believe you referred to the Dutch copy of this statement. Is plaintiff's exhibit A supposed to be a translation of this piece of apaper that I have in my hand?

A: He doesn't know because he doesn--, he can't read English.

Q: Do you know who made this translation, plaintiff's exhibit A?

MR. MESHEL: --Want to clear the record up here that's this becomes a problem, I believe it's and again I can check my facts but I'm almost positive that answer to question is yes, that is a, an exact duplication and that it was done by an attorney

here in Amsterdam who made the translation.

MR. SMITH: I'd like to mark the Dutch transcript, as plaintiff's exhibit B.

VOICE: I don't read Dutch but apparently just judging from the paragraphs breaks, it would appear to be similar.

VOICE: If we could tell, would you tell the,

MR. SMITH: -- translate that please, so it's said on the record.

A: That, his statement, he has written, and he says that goes with this case.

MR. MESHEL: Would you also tell him that hencefor th that he just is to answer que'tions and not volunteer anything else --

Q: When did you make up this statement, captain?

A: December the fifteenth.

Q: What year?

A: 1969

Q: Why is it dated December 1970?

A: Doesn't know.

Q: Who typed this up for you?

A: Doesn't know.

Q: Did you write it out in longhand?

A: He has written out a statement, on a special sheet of paper which was handed over to his office.

Q: Is thása statement that you are required to give?

A: As a captain, when you have such a case, you are obliged to make a report.

Q: I call for production of that original report that the captain made.

MR. MESHEL: Well I have no control over S.H.V. and nor do I know, know of the whereabouts of this report.

So I certainly, ah, cannot force him to do that.

Would you, would you translate that?

A: He handed it over to his office.

Q: I notice here captain, in your statement it says from the last mentioned date I am employed by Calpam, a joint venture of S.H.V. and Chevron.

Is that statement correct?

A: That's not correct. Not correct.

Q: What is incorrect about it?

A: He was employed by S.H.V.

Q: Isn't S.H.V. and Chevron now a joint venture called, should, ah, rephrase that question, isn't Calpam a joint venture of S.H.V. and Chevron at the present time?

A: -- thinks so, he thinks so but he doesn't know.

MR. MESHEL: Well let's leave, let's leve it on this basis. I think the confusion in the record is that at the time of this accident he was not employee of Calpam. I believe the statement only refers to subsequent, 1970 -- all right, if there's

any such statement which is still in existence, I will produce it for you.

MR. SMITH: Well his testimony was that he made this statement up, the original statement in Dutch, on December fifteenth, 1969 and in that statement he says, from the last mentioned date, I am employed by Calpam, a joint venture of S.H.V. and Chevron.

MR. MESHEL: Yes apparently this is something that, which was added in the interim, I would guess.

In other words you asked him about his original note and I think he said he drew that up the day after the accident. Now you're asking something different; now you'r referring to a statement drawn up a year later, apparently.

Mr. SMITH: Well that's not, that's not his testimony.

His testimony is that this statement was made up December fifteenth and this is a --

MR. MESHEL: That's right.

MR. SMITH: This, this is a trans--, this is a copy of it.

MR. MESHEL: No he never said that, I don't think.

Q: Captain, when did you make up plaintiff's exhibit B?

Captain, when did you make up plaintiff's exhibitB?

A: Fifteen or sixteen of December, 1969.

Plaintiff's Exhibit 11
Deposition of Captain Schuiling—Cross

Q: Now what was the point you were trying to make, Mr. Meshel, about this being a subsequent statement?

VOICE: Well I --

MR. SMITH: As I understand your proposition, plaintiff's exhibit B is, is in Dutch and plaintiff's exhibit A is an exact translation done by a Dutch attorney from plaintiff's exhibit B.

MR. MESHEL: Well perhaps I clear this up for you.

Captain --

MR. MESHEL: Let's, let, let --

No, no, the point of the, the point of it is, there's nothing very mysterious about this.

MR. SMITH: Well there is to me because it, the date of 1970 and he ah, he says he made it up in, in -- December of 1969.

MR. MESHEL: Yes, I think he was referring to, and I could be wrong, I think he's referring to the facts upon which he drew up this 1970 statement.

Now that's my understanding.

In other words, it ah, it ah, the, that he, when he drew up the statement initially in referring to the facts of, of the fourteenth. I think that's what he's talking about.

I don't think he's saying that every clause and phrase that is found in exhibit B --

MR. SMITH: Let me just stop you here, this testimony is not that. I've asked him twice and he's given the same answer, twice.

I start over again.

MR. MESHEL: All right, you want me to ask it on re-cross I will but I think I can clear it up for you.

MR. SMITH: I don't think you are, I think you're you're evading it and you're building up a record as to how this came, came into existence, trying to explain it away and it, it just won't work, I will start over again.

MR. MESHEL: Well -- all right.

Q: Captain, plaintiff's exhibit B, which is a type-written statement, is that a copy of the statement that you gave to your office?

A: He gave a written statement, and they typed that statement out in the office.

Q: Referring to plaintiff's exhibit B.

A: He says that they must have typed it out on my written statement.

Q: Does that represent your written statement or has it been changed.

A: This is my written state--, copy of my written statement.

MR. MESHEL: You, can I ask a question at this juncture so we can have our record clear?

MR. SMITH: All right, go ahead.

MR. MESHEL: Fine.

Q: Captain, I refer you specifically to the first clause, refer you specifically to the second sentence in the first clause, to the best of your recollection, di you, is that your language that was included in your written statement?

A: It's exactly the same language he used in his statement.

Q: If your statement was written on December the fifteenth, 1969, why do you mention January first 1970 there?

A: It may because my, the busy work to do.

MR. MESHEL: Q: Do you know if the written statement is still in existence?

A: He couldn't tell you.

VOICE: All right, now, the, proceed. It it's available, I'll attempt to get it.

Q: When was this plaintiff's exhibit "B" typed up?

A: He doesn't know because he was ill at that time.

VOICE: I think we're just about running out of tape here, could we stop for a second?

VOICE: sure

END OF TAPE

Plaintiffs' Exhibit 11
Deposition of Captain Schuiling—Cross

BAKER, NELSON, WILLIAMS & MITCHELL

FAIRMONT SHIPPING CORPORATION,)
)
vs) DEPOSITION
)
INTERNATIONAL OIL COMPANY)

MR. SMITH: Q. You didn't know the pilot on the Western Eagle, is that correct?

A: That's correct.

Q: In what port is he stationed, do you know?

A: He doesn't know at all.

Q: Have you ever come in contact with this pilot since this accident?

A: He's never known him and he's never seen him.

Q: How many pilots are there in this area?

A: He couldn't say, he couldn't even estimate.

Q: Are there many?

A: Very many.

Q: Do they all belong to the same, port trust?

A: There are river pilots and sea pilots.

Q: This particular pilot that was on the eas--, ah, Western Eagle, was he a sea pilot or a harbor pilot?

MR. MESHEL: At what point are you talking about?

A: He doesn't know for sure.

Q: Would docking at the outer harbor require a harbor pilot?

A: From safety point of view, he says yes.

Q: Is it required?

INTERPRETER: It's not clear -- you mean compulsory?

Q: Yes, is a harbor pilot required?

A: It's not required because there are no harbor pilots.

Q: Well wasn't your testimony before that there were harbor pilots and sea pilots both?

A: Well, when we speak of a harbor pilot we mean the river pilot.

Q: When you approached the Eastern Eagle you were in radio contact, I'm sorry, Western Eagle --

A: When we approached the Western Eagle, I had radar contact with, with Western Eagle.

Q: Not, not radar, radio

INTERPRETER: Oh, sorry, REPEATS QUESTION

A: By VHF.

Q: You, were you in constant communication with the harbor pilot?

A: Continuously is probably a little much, to say so, but on the way, from the harbor till we met her, we got orders from the pilot.

Q: What were the orders of the pilot?

Plaintiffs' Exhibit 11
Deposition of Captain Schuiling—Cross

A: The instructions, the pilot's instruction were for the Frederick Hendrick to make fast at the bow and the Sophia at the stern of the Western Eagle.

Q: Did he use the names that you just mentioned, the Sophia and Frederick Hendrick?

A: He can't say, but he is sure the pilot said one tug forward, one tug aft.

Q: And whereabouts were you at that point when he gave those orders?

A: The Sophia had left, the outer harbor.

Q: Where was the Frederick Hendrick is it?

A: The Frederick Hendrick was about three, to three hundred, three hundred fifty meters ahead of us.

Q: Did you take up a position on the stern of the Western Eagle?

A: As he had got the survey of the situation, he, and he saw two ships coming down, he took for safety's sake up a position amidships of the Western Eagle.

Q: What was the position that the pilot ordered you to go to as you were proceeding out to the vessel?

A: He had no orders from the pilot but that he had to make fast on the stern.

Q: Whereabouts on the stern?

A: Starboard side, starboard quarter aft.

Q: And instead of going to that position you went

to a position amidships, is that correct?

A: That is correct.

Q: And you did this for your own safety, is that correct?

A: No, one way yes, one way no.

He had orders from the pilot to wait, making fast, until the ship had swung, had swung 'round.

Q: Did the pilot tell you which way the vessel was going to swing?

A: The pilot told them when they were steaming from the outer harbor to the Western Eagle, Western Eagle. The pilot told them that he was going to swing the Western Eagle to stem the tide and that after he had done so, the tugs could make fast. The Sophia only.

Q: It's your testimony that you never put a line on the vessel until after she grounded, is that correct?

A: Definitely not.

Q: Did the pilot, did the pilot at any time prior

to the time you left outer harbor, tell you he was going to anchor?

A: Pilot didn't talk about anchoring.

Q: That was something that you thought might happen, is that correct?

A: His supposition was that he thought he would.

Q: I have no other questions.

MR. MESHEL: OK.

MR. MESHEL: The suggestion is that we treat this as closed, subject to the identification of certain documents which I've called for.

MR. MESHEL:
Q: Would you state your name for the record please?

A: Willem Bout.

MR. MESHEL: And we'll have the same stipulations Mr. Smith and I, again I'll, ask that you swear the witness.

SWEARING, IN DUTCH

Q: Do you solemnly swear that the testimony that you are about to give is the whole truth and nothing but the truth so help you God?

MR. MESHEL: Sounds like more than that. Mr. Smith, how does he spell his last name?

INTERPRETER: His last name? B-O-U-T

MR. SMITH: B-O-U-T. OK. That's what it sounded like.

Q: Would you state your present home address?

A: 175 Ausland, Vlissengen.

Q: And by whom are you presently employed?

A: S.H.V. or Calpam

Q: On December fourteenth, 1969, by whom were you employed?

A: Chevron

Q: All right, maybe, then, on December fourteenth, 1969, who were you employed -- sixty nine, who were you employed?

A: SHV

Q: And not Chevron?

A: Yes

TRANSLATED, NO ENGLISH TRANSLATION FOR RESPONSE

All right.

Q: Ah, how many years have you been going to sea?

A: He started as a fisherman.

Q: And what certificates does he presently hold?

A: He has no tickets whatsoever.

Q: How long has he been a tugmaster?

A: For ten years.

Q: And was he tug master of the Frederick Hendrick in December 1969?

A: Yes.

MR. MESHEL: Let the record indicate, now we've now interrupted the deposition of Captain Bout and we're now back with Captain Schuilling.

Captain, you're still under oath.

Q: You understand that?

A: Yes.

Q: Now you referred on cross-examination to a report that you made on December fourteenth, 1969, is that correct?

I show you a four page document, which is apparently in ink handwriting, and ask you if you can identity that document.

A: He can identify it very well because it's his own handwriting.

Q: Is that the document you're referring to in your own handwriting which you made the day after the ship stranding?

A: That's the document he has written as a result of the stranding of the Western Eagle.

Q: Now, can we do this Mr. mith, I see in my corresponding letter they want this back, apparently they need it for the files.

Could we do this, could we mark it for identification so that we are certain this is the same document you are going to see later on, and have copies of it made and forwarded to you.

MR. SMITH: I would like to have the interpreter make a translation on the record, of this -- would you be able to do that?

INTERPRETER: Yes.

MR. SMITH: Shall we mark it first for identification as you suggested?

MR. MESHEL: All right.

MR. SMITH: Defendant's exhibit five and a copy will be all right, if you have copies made.

MR. MESHEL: Let the record indicate that in the upper left hand corner I have marked on one of the pages, defendant's five, and on the other, defendant's 5-A, I am initialling it and Mr. Smith, will also initial it as well.

All right, would you be good enough to read that for us?

VOICE: Let's ask Mr. Smith, heis INAUDIBLE, what do you think that, it, let's ask Mr. Schuilling --

VOICE: --ask--

VOICE: The thirteenth.

VOICE: Yeah.

INTERPRETER: He says he put down the thirteenth because his time counts from six on the thirteen 'til six in the a.m. on the fourteenth.

MR. SMITH: Would you read it to us now.

INTERPRETER: Saturday night, 13/12/'69, S.S. Western Eagle, About four o'clock the above mentioned ship reported that it was off the entrance of the harbor. Sophia and Frederick Hendrick left to assist the ship.

Plaintiffs' Exhibit 11
Deposition of Captain Bout—Direct

Flushing radio broadcast a message, dense fog, off Flushing. On the radar screen I saw the ship. It steamed upriver, later on I found that it had not yet, that she had not yet turned.

On the radar I saw that the ship came athwart in the fairway to make a turn. A moment later it was lying parallel to the fairway again.

According to the picture I observed on the radar, the ship had been obstructed by two "coasters?" one of which passed, on the starboard side and the other one on her port side.

The ship must have drifted toward the lee owing to the strong south-southeast winds and been driven against the dike.

Then we made fast to the ship at about four thirty.

We couldn't make fast before that as we arrived in her position after the two coasters had passed.

Frederick Hendrick made fast to the bow, the Sophia to the stern on starboard quarter.

The first rope parted when we started to pull. Immediately afterwards we make fast again with two nylon ropes. When we gave full out, we couldn't possibly get the ship afloat.

The Frederick Hendrick cast off at the instructions of the pilot. She came to the stern to make fast.

Even now we didn't succeed in getting the ship afloat.

We went on towing 'til after high water. An attempt was made by the tug Farwundren to make fast as well but she

didn't succeed.

The cause of this failure was that the current and the wind were too strong. And there was not enough room for maneuvering close to the lee shore. The captain of the Western Eagle refused assistance from the tugs of the Union and the Dames.

MR. SMITH: All right, go on, a minute.

INTERPRETFR: Sophia, and Frederick Hendrick, stayed all day, on stand by, and were connected with the Western Eagle by means of ropes.

At 1600 Mr. Vembras (Phonetic) went on board to have a contract signed. Around 1715 the tug boat, Holland, the tug boats Holland and President Golring (Phonetic), made fast to the bow.

The Frederick Hendrick had to let go and would be replaced by two tugs of the Union.

The latter couldn't make fast owing to the, defective towing material. The ship was refloated at 1810 by the three above mentioned tugs, President Golring, Holland and Sophia.

The Western Eagle was then towed to the dry dock of the K.M.S. in Seiger(?)port, Schlue(?)haber. Before entering Schluehaven the tug J. M. Gorling made fast to port quarter and President Golring was replaced by Lucy Gorling, the ship moored at slightly 1:15.

MR. SMITH: And, have plaintiff's exhibit B please.

Plaintiff's exhibit B, we referred to before, which is in Dutch --

VOICF: To whom, the plaintiff's exhibit B, INAUDIBLE UNDER RATTLING OF PAPER.

MR. SMITH: Is that a copy of plaintiff's exhibit five and five-A?

A: That's an, an extended copy.

Q: When did you make this extended copy?

A: He, he doesn't exactly know but he knows it was made when the Union, that's the tugboat company, asked for a report for the papers.

Q: Was it made in December of 1970?

A: Before that date.

Q: How much before that?

A: He doesn't know because he's been ill and he's been in bed a long time.

Q: Now at some time you mentioned that you gave answers to a questionnaire to Ince and Co. Is that correct?

A: What is Ince Co.?

Q: Would you read the text of the last paragraph of your report which is, plaintiff's exhibit A, and tell me what that paragraph means?

You can read it in Dutch perhaps, on Plaintiff's

exhibit B, is in Dutch.

WITNESS READING IN DUTCH

INTERPRETER: He gives an accurate translation of this lengthy file exhibition, and he said he doesn't know who Ince Company are but he thinks they are people from Antwerp.

MR. SMITH: Do you have a copy of the questions and answers to which you referred when making up this statement?

Referring to plaintiff's exhibit A.

A: He has not.

He only has the written statement, and this typed--

Q: Do you recall giving the answers to questions to Ince & Co.?

A: He doesn't know who Ince & Co. are.

Q: Do you recall giving answers to questions to anyone else?

A: He didn't have to answer any questions but he had given answers to Ince & Co. at, to the firm of the Union who made some questions. A representative of the Union.

MR. SMITH: When you say representative of the union, are you talking about a labor union or a company?

INTERPRETER: That's a company, that's the Union, IN DUTCH, verkage.

MR. MESHEL: Now indicate that you're, you're giving information but that's not the witness is that right?

INTERPRETER: Yes.

VOICE: OK, I'll put it back on the record.

MR. SMITH: Q: We have here, plaintiff's exhibit A and B, which are the English and Dutch statement, being the same statement translated from Dutch to English and we have another report, defendant's exhibit 5 and 5-A, which were made out immediately following the accident, is that correct?

Q: Is that correct?

A: That's correct.

Q: Now referring back to plaintiff's exhibit B, do you have any recollection of making that statement up?

A: He says that plaintiff's exhibit B is only an extension of a certain statement.

MR. MESHEL: Which is exhibit 5 and 5-A.

INTERPRETER: Yeah.

VOICE: My question is, do you have any recollection of making it up?

A: Yes.

Exhibit B, is based on his written statement.

MR. MESHEL: Q. Ask him if that's exhibit 5 and 5-A.

Is the written statement --

A. That's the 5 --

Q: And 5-A

A: And 5-A

CONVERSATION IN DUTCH

MR. SMITH: Let me, let conduct the cross-examination

of the witness --

MR. MESHEL: I didn't mean to but he just said signed statement, I want to be clear on the record what he's talking about, in other words, I don't want to get in a court of law and find out, we don't know what he means by signed statement.

MR. MESHEL: Written statement --

MR. SMITH: I see --

MR. MESHEL: Does he mean written statement 5 and 5-A -- is that what he means by written statement.

A: Yes, that was his written statement and what he previous, had said signed statement.

MR. SMITH: Q: Now getting back to my question, do you have any recollection of making this statement, plaintiff's exhibit B.

A: He said, he had extended his written statement and added more data.

Q: When did you do that?

A: He can't give an exact date.

Q: Was it December 1970?

A: No

A: I don't know.

MR. SMITH: Q: This is your signature on plaintiff's exhibit A, is it not?

A: Yes it is.

Q: And when did you sign that?

A: He doesn't know exactly.

He can't venture a date.

Q: Was it some time in December of 1970?

A: I don't know when. WITNESS IN FNGLISH

Q: Now there is no signature on plaintiff's exhibit B.

A: Yes.

A: they just sent it to him, as a, so that he could recall the facts.

Q: In order words somebody else typed this up.

A: Yes, somebody else typed it up.

Q: It is based on this report and only this report.

MR. MESHEL: That's not what he said, that's not the testimony, I'm going to object to you being unfair with this witness.

Mr. SMITH: Now -- if you object I'll ask another question.

Q: Did you have anything to do with preparing this typewritten statement marked plaintiff's exhibit B?

A: I made a statement based on the facts.

Q: Which statement did you make based on the facts?

A: His first statement was, indicating 5 and 5-A.

MR. MESHEL: indicating 5 and 5-A -

A: -- later on plaintiff's exhibit B.

Was extended, more facts had become known.

Q: Wasn't your testimony that someone typed this up and sent it to you so that you could sign plaintiff's exhibit A?

A: It was not sent to him for signing.

Well Captain, your signature isn't on plaintiff's exhibit B.

Exhibit B.

INTERPRETER: They sent it to him.

Q: So it's not your statement then is that right?

MR. MESHEL: Objection to the form of the question.

MR. MESHEL: What do you mean, did he physically type it up or did he, is that his statement, it's a big difference.

If you're going to ask him did he physically typed it up I think he's already testified he didn't type it up.

But -- in the confusion --

MR. SMITH: Look, I wish you'd let the witness testify, you still have cross-examination --

MR. MESHEL: I understand that but I don't want to -- I dis--, the language problem here and I want the record to be perfectly clear.

MR. SMITH: I'd like to have it perfectly clear too because he's, he's testified that he received this, it had been typed up by somebody else.

MR. MESHEL: That's it. Right.

MR. SMITH: No question about -- did he ever write that statement, out, captain, in longhand?

A: Not that one.

Q: Which one did you write out in longhand?

A: That one.

MR. MESHEL: Indicating five.

Q: Did you ever write any other statement out in longhand besides exhibit 5 and 5-A?

A: He didn't make written statements except this one.

MR. MESHEL: Ask him about oral statements.

MR. SMITH: Now wait a second, let me, examine the witness.

Q: Did you talk to anybody personally and give him this statement personally, by mouth?

Referring to plaintiff's exhibit B again.

A: This statement was made with the Union.

MR. MESHEL: Indicating B.

A: To have an, extensive story on the case.

Q. And Union is a, is the towboat company in Antwerp is it?

A: In Antwerp (WITNESS, IN ENGLISH)

Q: Who sent you this? Was it Union or was it Calpan -

MR. MESHEL: Indicating B.

A: This Dutch statement was sent to me by the office of S.H.V.

Q: When did you receive it?

A: He can't say, he does not remember the date he received it.

Q: Was it received some time in 1970?

A: He received it in 1970.

Q: Was it in December of 1970 that you received it?

MR. SMITH: Oh I had my, well just, one other question.

Q: Before January first, 1970, you worked for S.H.V. is that correct?

A: Correct

INTERPRETER: Yeah.

A: Correct.

Q: The, how many tugs does S.H.V. have?

A: Three tugs.

Q: And where are they stationed?

A: Our home port is Flushing.

Q: Where are they normally stationed, though, for operational purposes?

A: In the outer harbor of Flushing.

Q: Prior to January first 1970 were these tugs employed in moving vessels in and out of Calpan?

MR. MESHEL: You're talking about prior to January one, 1970?

MR. SMITH: Yes

MR. MESHEL: What, so, what does that have, subsequent to the events have to do with it.

MR. SMITH: This is prior to.

Q. Prior to January '70 were these vessels engaged in leading vessels in and out of Calpam?

Plaintiffs' Exhibit 11
Deposition of Captain Bout—Direct

MR. MESHEL: For the record I'll object on the materiality of this but go ahead if you want.

A: These ships, these tugs were used to move the ships, moored at the berth of S.H.V. in and out, the harbor.

Q: Did they move any other vessels other than those going in and out of Calpam.

MR. MESHEL: Same objection.

A: These tugs were also used to assist ships that had as their destination harbor, von Vlissengen, or ships bound for the shipyard.

Q: They were primarily engaged in working for Calpam prior to one January 1970, is that correct?

MR. MESHEL: Objection to the form of the question, what do you mean by primarily?

I also object to its materiality.

MR. SMITH: Let's, let's take the question.

Well the object to the question is on the record.

Q: How often did you move vessels in and out of shipyards -- prior to one January 1970?

A: Maybe five, six hundred ships a year.

Q: A year?

How often a year, yes how often?

A: It varied, maybe a hundred, a hundred fifty.

And then only to the shipyards of the K.M.S.

MR. SMITH: Well, I have no other questions.

Plaintiff's Exhibit 11
Deposition of Captain Bout—Direct

MR. MESHEL: We're now back, we've finished the deposition of Captain Schuilling and we're now at the re-convening the deposition of Captain Bout.

Captain Bout, you're still under oath.

Q: Were you the captain of the Frederick Hendrick on December 14th, 1969?

A: Yes

Q: Now I believe you testified that the picture on defendant's four fairly depicts the Frederick Hendrick.

A: That's correct.

Q: The dimensions and figures which appear on the reverse side of that card, are they correct as of December of 1969?

A: Yes they are correct.

Q: What is the maximum pulling power of the Frederick Hendrick in December of '69?

A: Between nine and ten tons.

Q: And how many horsepower?

A: Six hundred fifty horsepower.

Q: What was the minimum draft that the vessel could accommodate?

A: The Frederick Hendrick was 280 centimeters.

Q: And did you have a crew of four?

A: A crew of four.

Q: And did the Frederick Hendrick have radar?

A: Yes.

Q: And ah, what was the ranges on the radar?

A: From a half to ten miles.

Q: Now when did youbboard the Frederick Hendrick on December fourteenth?

A: Three o'clock in the morning.

Q: And where were you located at three o'clock?

I'm sorry, where is the Frederick Hendrick located at three o'clock?

A: She was laying alongside a jetty in the outer harbor.

Q: At any particular jetty?

MR. MESHEL: Was the radar on at this time?

A: Yah, the radar was switched on.

Q: And when did you first switch on your radar?

A: He switched the radar on when they left the jetty and when it warmed up a little, when they were abeam of the red pier light they had a picture.

Q: And can you estimate the distance between your vessel as it was abeam of the pier light and this vessel which you had visual contact with and later saw on the radar?

A: No.

Q: Now, did you ever attempt to ascertain the position of the Western Eagle as you steamed eastward?

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Plaintiff's Exhibit 11
Deposition of Captain Bout—Direct

Q: And did the Frederick Hendrick have radar?

A: From a half to ten miles.

Q: Now when did you board the Frederick Hendrick on December fourteenth?

A: Three o'clock in the morning.

Q: And where were you located at three o'clock?

I'm sorry, where is the Frederick Hendrick located at three o'clock?

A: She was laying alongside a jetty in the outer harbor.

Q: At any particular jetty?

MR. MESHEL: Was the radar on at this time?

A: Yah, the radar was switched on.

Q: And when did you first switch on your radar?

A: He switched the radar on when they left the jetty and when it warmed up a little, when they were abeam of the red pier light they had a picture.

Q: And can you estimate the distance between your vessel as it was abeam of the pier light and this vessel which you had visual contact with and later saw on the radar?

A: No.

Q: Now, did you ever attempt to ascertain the position of the Western Eagle as you steamed eastward?

A: No.

Q: Now did there come a point when you came alongside of the Western Eagle?

A: Yes.

Q: Was there a flood current running at this time?

A: Yes.

Q: And what do you estimate the speed or velocity of the flood current?

A: Maybe a mile a mile and a half, he doesn't know.

Q: Was there any wind blowing?

A: Yah.

Q; How strong on the --

A: South south east.

Six, five to six.

Q: Did there come a time when you eventually were next to the Western Eagle?

A: Yes.

Q: And what would you estimate your visibility was at that moment?

A: Visibility he estimates forty metres.

Q: Now did you receive any instructions at this point when you were alongside the Western Eagle?

A: Yes.

To make fast at the bow.

Q: And who gave you these orders?

A: The pilot gave the orders.

Q: And where were you physically in relation to the Western Eagle at this point, that he gave the orders?

A: Ten metres away from the ship and in the mid-ships, amidships of the Western Eagle.

Q: What position was the Western Eagle facing?

A: No idea.

Q: What position were you heading?

A: We was headed east, southeast.

Q: Did there come a time when any other ships came on the scene?

A: He didn't observe the other ships because he says when we are lying alongside of another ship, your radar picture is entirely no good.

Q: Were, did you, ever make an attempt to position yourself to tie up to the Western Eagle?

A: Yes he did.

Q: Describe how the Frederick Hendrick maneuvered in connection with the Western Eagle.

A: He went to the ship's bow on port side.

Q: What happened next?

A: One, they lowered down a rope from the Western Eagle.

Plaintiffs' Exhibit 11
Deposition of Captain Bout—Direct

Q: From what side of the Western Eagle.

A: Port Side.

Q: Port side, What part of the vessel, forward or aft?

A: The bow.

Q: The bow?

A: Yes.

Q: What happened next?

A: When he had maneuvered his tug right under the stem of the Western Eagle, he noticed that the Western Eagle was going astern, which fact he based because he was lying dead still in the water, and the Western Eagle was moving away from him.

Q. And were you able to connect the Western Eagle's rope?

A: No

He tried to do so but he failed to do it.

Q: What is the next thing that happened after the Western Eagle went astern you couldn't connect.

A: Then he saw two mast headlights appear, very likely a coaster, and he turned round to starboard.

Q: Which directions were the coasters coming from?

A: They came from directions east (Antwerp).

Q: Were they coming from the easterly direction of the river?

A: Yes.

Plaintiffs' Exhibit 11
Deposition of Captain Bout—Direct

Q: And what side, where were they located in the river as they were heading easterly?

A: They were not heading easterly.

Q: Ah, westerly, I'm sorry.

A: Stopped in order to locate the position of the coasters.

Q: What's the next thing that happened after you maneuvered?

A: --back to port side of the Western Eagle.

INTERPRETER: Will you repeat the question?

Q: Before you saw these coasters, what side of the vessel were you on?

A: At that moment he was right under the stem.

Q: And when you maneuvered your vessel, did you cross the Western Eagle's bow?

A: The stem moved away from him because the vessel, according to, moved away from him, he tried to get hold of the rope, the Western Eagle's rope but he failed.

Q: And did he fail because of the movement of the Western Eagle or because of the movement of his vessel?

A: He said he was lying still in the water so it must have been on account of the Western Eagle's maneuvering.

Q: What did you do after the Western Eagle moved?

A: Then he saw the coaster and he turned around over starboard.

Plaintiff's Exhibit 11
Deposition of Captain Bout—Direct

Q: And where was he now in relation to the Western Eagle?

A: Then he rounded from starboard side of the Western Eagle.

Q: At what point?

A: Amidships.

Q: And could he see the Sophia at that point?

A: No.

Q: Which direction was the Frederick Hendrick now headed?

A: No idea.

Q: What's the next thing that happened?

A: Then he noticed that the Western Eagle was moving to port, very fast --

Q: Would he say this was a slow turn to port or -- a violent turn to port? Was this a slow turn to port or a violent turn to port?

A: Rather violently.

Q: Then what happened?

A: Then he went to the bow of the Western Eagle. When he was connecting to the Western Eagle he noticed that it was practically on the stones.

Q: Now, had you received any instructions from the pilot aboard the Western Eagle?

A: Yes.

Q: What were those instructions?

A: To make fast on starboard well and to pull as hard as he could, towards the middle of the river.

Q: Was this after she made her movement of the bow to port?

A: Yes. Then she was lying parallel to the river bank.

Q: Captain, I show you a chart which has previously been marked.

Marked as defendant's exhibit two.

Could you indicate for us by pointing with a pencil the position of the Western Eagle at the time that you say that she was on the dike.

MR. MESHEL: Just point.

Now could you visually see the stones of the dike at this point?

A: When he connected to the Western Eagle, he could see the stones.

Q: Did you in fact eventually connect to the Western Eagle.

A: Yes.

Q: Was this the first time you had physically connected to the Western Eagle.

A: Yes, He only made once, fast to the bow.

Plaintiffs' Exhibit 11
Deposition of Captain Bout—Direct

Q: What portion of the tug did you connect the Western Eagle's line to?

A: He connected the Western Eagle's towing line to his slip-hook.

Q: And did you then commence to tow the vessel?

A: Yes.

Q: And did you get tension in your rope?

A: Yes.

Q: And did you then commence to pull full speed ahead?

A: Full ahead.

Q: How long?

A: Full speed ahead and for about fifteen minutes.

Q: And what happened?

A: Then he got orders because the ship obviously remained in the same position.

Q: And who'd you get your orders from?

A: And he gave orders from the, eh, he got orders from the pilot in the Western Eagle.

Q: And what were those orders?

A: To let go forward and to make fast aft.

He asked twice for confirmation because the first time he thought he had misunderstood the pilot.

Q: Did you get reconfirmation?

A: You know, he got the confirmation to let go forward.

Q: And then what'd you do?

A: He got orders to make fast to the stern of the Western Eagle at once.

Q: And did you do that?

A: Immediately.

Q: How many lines did you have out?

A: One rope.

Q: And what portion of the Western Eagle was the rope connected to?

A: According to his idea connected on port side just clear of the center of the stern.

Q: Did you then commence to tow the vessel again?

A: He started to tow at the instructions of the pilot to tow straightaway.

Q: In what direction was your vessel heading at that point?

A: South.

Q: And could you see the Sophia?

A: Yes, it, the Sophia was about ten metres away from the Frederick Hendrick.

Q: Were you in radio contact with your, captain of

the Sophia?

A: Yes.

Q: And was this, during the whole operation?

A: Yes, during the whole operation he was in contact.

Q: Were you successful in pulling the vessel off the dike the second time?

A: No.

Q: Did you eventually see at low tide some time later how the vessel was positioned on the dike?

A: Yes, he did.

Q: And could you describe for us how it was positioned?

A: With the keel of her stern she was right across the breakwater.

Q: And approximately what was the degree reading if you can give us one, of her bow?

A: And the bow of the Western Eagle -- according to the Captain Bout, the Western Eagle was heading east.

Q: At low tide, how far up the dike up the slope of the dike, was she?

A: On the inside, was no water at all.

That means there was no water between the port side of the Western Eagle and the dike.

Q: And what about the starboard side?

A: On starboard side there was water.

Q: Did you take part in the salvage operations subsequently?

A: They remained connected to the Western Eagle 'til high water.

Q: Did you, did the Frederick Hendrick take part in the salvage operation later on, after the fourteenth?

A: At five o'clock they had to pass the tow rope to a Belgian tug.

Q: Can you tell us at what point in time you estimate that the Western Eagle grounded on the dike? In, connection with all the events that you've told us so far.

A: A: He pointed the position out already he says, and the time, was about five o'clock.

He doesnt know exactly --

Q: How much, how many minutes after, put this way, the time at which he attempted to grab the, to get the Western Eagle bow line, the time when he describes the vessel going astern, did the Western Eagle ground upon the dike.

A: He says he doesn't know, it might have been a quarter past four.

Q: I'm not, tell him, I'm not asking, uh, I'm not asking you for the time -- but the time interval.

A: The time, the interval between the attempt to get

the bow line of the Western Eagle and the stern lead.

Q: Yeah, you're talking in English now though.

INTERPRETER: Well, that's what he said.

Q: Oh, all right.

VOICE: Yes

INTERPRETER: Maybe ten minutes.

Q: Could it be less than ten minutes:

A: No

INTERPRETER: (in Dutch) -- I'll repeat this question in Dutch.

What is the interval between the moment he tried to get the bow line and the moment of the stranding?

A: Doesn't know.

Q: Did the, maneuver at which time he noticed the Western Eagle's bow, go to port, take, take some time?

A: He couldn't get hold of the line and when he maneuvered the Frederick Hendrick in a position so as to be able to get under the line, he saw that the bow of the Western Eagle was violen tly swinging to port.

Q: Was the Western Eagle still going astern at the time the vessel was swinging to port?

MR. SMITH: Objection.

A: No.

Q: All right, no further questions.

MR. SMITH: After this grounding of the Western Eagle, did you submit a statement to your employer?

A: No he didn't his colleague did.

Q: As between the two tugs, the Sophia and the Hendrick, the Frederick Hendrick, does one have the control, does one of the two tugs have the control?

A: No.

Q: Why didn't you make a report to your company

A: He thought that one statement was sufficient as it concerned the same stranding and nobody asked for it.

Q: By whom are you now employed?

A: At the moment he's employed by Chevron.

Q: By Chevron.

Prior to January first, 1970, by whom were you employed?

A: He is not sure but he thinks he was employed by S.H.V.

Q: Well why isn't he sure?

A: He has changed so often that he doesn't know any more.

Q: You mean that the ownership of the tug, your tug, has changed so often?

A: The name of the, his employers have changed so often.

Q: How many times have they changed in the last --

MR. MESHEL: Object to the relevance in this.

A: During his career in twenty years, three times.

Q: The latest one is Chevron, is it?

A: The last one is Chevron.

MR. MESHEL: Could I make just a clarification, I'm not trying to obstruct, is he talking Chevron or Calpam.

A: Not TRANSLATED.

VOICE: Should I ask him?

Q: All right, captain, as you were proceeding from the outer harbor toward the Western Eagle, what orders did you receive from the pilot on the Western Eagle if any?

A: No instructions whatsoever

Q: Didn't you think that was strange that you didn't receive any --

MR. MESHEL: Objection to the form of the question.

-- let it stand -- all right --

A. He didn't think it strange.

Q: How did you know where to go? Orders or instructions --

A· The Western Eagle was bound for the bunker station. They knew.

Q: Where di you receive your instructions from?

A: They got their instructions when they were alongside the Western Eagle.

Q: Well how did you know where to go alongside the Western Eagle, there were two towboats, how did you know to go forward?

A: Normally the strongest tug is used aft and the weakest at the bow.

Q: You were the weaker of the two tugs?

A: NOT TRANSLATED.

Q: You automatically went to the bow, is that correct?

A: He went on his own accord to the ship's bow.

Q: As you approached the ship, you were alongside the ship, I believe your testimony was, what words if any did you receive from the pilot on the Western Eagle?

A: To make fast at the bow as quick as possible.

Q: Did he say, did he say which bow to make fast on, port or starboard?

A: Port side.

Port bow.

Q: Did you make up, did you take a line from the port bow?

A: He had, Captain Bout had asked the Western Eagle to lower the tow line down from the port bow, and he attempted to grab it. The crew lowered it down.

Q: Were you able to make that line fast?

A: No.

Q: Why not?

A: We have maneuvered the ship in the correct position to pick up the tow line that, with a stick with a hook attached to it, but the Western Eagle was going astern and that's why

they missed the rope.

Q: Whereabouts on the bow of the Western Eagle was the line put over?

A: At the first check on port side.

Q: Would that be at the forward end of the number one hatch?

A: No, it was the, just clear of the stem on port side.

Q: And how was your vessel at precisely that moment, and I would like you to use those models, may I have that please.

All right, this is the Western Eagle.

Now, put your vessel, your tug, to the ship's line to the bow line.

A: And when he was in that position, the Western Eagle went astern.

Q: Could you also go astern?

A: He could also go astern -- he says if he would have done that his bow would have swung to starboard.

He, he couldn't do that, the Western Eagle was going astern and he, he couldn't have possible grabbed the towing line.

Q: Would you put the vessel back in the, your tug back in the position it was in, is that approximately it?

A: Yah.

Q: Mark that with the red pencil then. Translate.

TWO VOICES TOGETHER, ENGLISH

VOICE -- that, that is -- line there? And --

A: That's that's the towing line that was lowered down, should be in a perpendicular direction of course, he says --

Q: All right, now would you draw around the model of the tug to show the relative position of the tug and the Western Eagle?

VOICE: -- the first time --

INTERPRETER: Your question was, to give the position of the tug and of the Western Eagle before any, when he attempted to grab the towing line.

MR. SMITH: First time you went alongside, he had instructions, according to his testimony, to go alongside the port side.

INTERPRETER: Yes, first he went alongside.

SEVERAL VOICES, ENGLISH

MR. MESHEL: -- two different questions.

Do you want him to draw the diagram of the vessel of the, of his vessel --

MR. SMITH: -- originally on the piece of paper here.

MR. MESHEL: Well what is that, you want to find out what point --

MR. SMITH: -- the record's really clear on it and I --

MR. MESHEL: Well I'm not clear, I'd like to know.

Q: Well captain, put the model in the position that you had it in originally on this diagram.

In other words you draw a circle around, an outline around --

MR. MESHEL: I appreciate it, Mr. Smith, I don't mean, to interrupt you, if you could, if you would ask him at what point in time we're talking about here.

MR. SMITH: Well it's already on the record and --

MR. MESHEL: But I, I'm not sure it is --

MR. SMITH: Well you can take it on cross-examination then.

MR. MESHEL: All right, if you want to work it that way, fine.

MR. SMITH: I, I don't want to confuse the record at this point.

Now would you label the big one the Western Eagle and the small one --

Q: Now after you missed the line, where did you go?

A: Then he noticed that the Western Eagle had stern-way, he gave also astern with his engine but as the Frederick Hendrick has a left-handed propeller, the bow moved to port,or swung to port, and he could not keep in contact with the bow of the Western Eagle.

Q: What was his next maneuver after he realized that his stern was swinging to starboard and his bow to port?

A: At that moment he saw a coaster coming down and he gave full ahead and hard to starboard, to, and came on the starboard side on the Western Eagle.

Q: Did he, did you receive any orders from the pilot after you missed the line the first time?

A: No.

Q: Did you tell him that you missed the line?

A: No.

MR. MESHEL: Object to the phrase missed the line but I --

A: He says he didn't have much to tell because his first duty was to get himself into safety, when he saw that coaster.

Q: How long after that did the vessel ground on the dike?

A: Practically at the moment he arrived on starboard side of the Western Eagle because then he noticed that the Western Eagle's bow was swinging violently to port.

VOICE: Did you see the Sophia when you came around to the starboard side to get out of the way of the coaster.

A: No

Q: When was the last time you saw the SOFIA?

A: He saw the SOFIA for the last time when he was lying alongside the jetty.

-- just left a little ahead of the SOFIA.

Q: Normally where do you meet a vessel that you're going to assist to dock at the bunkering dock?

MR. MESHEL: Object to the form of the question as to normally.

A: Normally in Flushing, Flushing Roads, tall, in the direction of what was called the Rhiesoft.

Q: Would you put an X on the chart with this red pencil as to where --

A: They are waiting for the ship in that position.

Q: Would you put an X on the chart -- big enough so we can see, captain.

Would you put a circle around that?

And would you mark that with a two alongside?

MR. SMITH: I have no other questions.

MR. MESHEL; Captain, did you ever have occasion -- let me ask -- mark, identification.

MR. MESHEL: Yeah, let the record indicate we're now marking for identification the drawings of Captain Bout --

VOICE: Plaintiff's exhibit C, would it be?

VOICE: Yes

VOICE: Tell him not to volunteer anything, just to answer questions.

Q: Do you ever have occasion, captain, to meet vessels east of the outer harbor?

A: Yes, the ones that come from Antwerp.

Q: What about the ones that come from up, from the opposite direction?

A: Then you leave the outer harbor and await the ships in the roads, west of the harbor.

MR. MESHEL: I have no further questions.

Are we through?

MR. SMITH: I think so, just, me, check this, we won't get another chance at this fellow.

No I don't have anything.

MR. MESHEL: Thank you very much

This concludes the deposition of Captain Bout and you may now transcribe.

MR. SMITH: I give you this plaintiff's exhibit C since you have all but this one.

END OF SESSION

Opinion #40,443, MacMahon, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

#40443

FAIRMONT SHIPPING CORP. and FAIRWINDS OCEAN CARRIER CORP., Owners of the S.S. WESTERN EAGLE,

Plaintiffs,

-against-

CHEVRON INTERNATIONAL OIL COMPANY, INC.,

Defendant.

70 Civ. 3382-LFM

OPINION

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
MAR 11 12 28 PM '74

APPEARANCES:

Burlingham Underwood & Lord, New York City, for plaintiffs; Joseph C. Smith, New York City, of counsel

D'Amato, Costello & Shea, New York City, for defendant: Robert E. Meshel, New York City, of counsel.

MacMAHON, District Judge.

In the early morning hours of December 14, 1969, the S.S. WESTERN EAGLE, a vessel of Liberian registry, stranded on a dike in Flushing Roads, a body of water leading to the port of Flushing, The Netherlands. Plaintiffs, the owners of the WESTERN EAGLE, seek to recover

for the damage to the vessel, claiming that the conduct of the tugs SOPHIA and FREDERIK HENDRIK caused the grounding and that defendant is liable, in contract, for the breach by the tugs of an implied warranty of workmanlike service. The case was tried to the court, sitting without a jury, on the issue of liability only.

Plaintiffs' theory of recovery is based upon an alleged contract for bunkers[1] between plaintiffs and defendant, whereby defendant promised, among other things, to provide the WESTERN EAGLE with pilotage and tugs at Flushing. This contract, plaintiffs argue, contains an implied warranty of workmanlike service, which was breached by the tugs' conduct, and defendant is therefore liable for the foreseeable damages resulting from the breach. Defendant denies the existence of any contract between it and plaintiffs, or the existence of any clause in the contract for pilotage or towage, or of an implied warranty of workmanlike service, or any conduct by the tugs amounting to a breach of that warranty. We turn first to the question of the contract, if any, and its terms.

The WESTERN EAGLE, a converted T-2 tanker, was bound for the United States after discharging her cargo

Boulogne and was in need of fuel. The only bunkers ilable in Northern France in December 1969 were being d at excessively high prices and, therefore, Alex el, an employee of Norland Shipping & Trading Co. rland), which was acting as agent for the vessel's ers, attempted to acquire a more economical stem[2] for WESTERN EAGLE at other ports in Northern Europe. el called C. D. Mallory & Co., Inc. (Mallory), Nor- d's regular bunker broker, to discuss an economical n. Pagel spoke to Franz P. K. Werner of Mallory, who sed him that a good bunkering port might be Flush- Holland.

Pagel examined the bunker prices at Flushing found them to be slightly higher than at Rotterdam, e Norland had a contract with Gulf Oil Co., so he d Werner why the WESTERN EAGLE should bunker at hing if it were more expensive. Werner replied: but there is a gimmick to this one. . . . Chevron s care of everything there. They furnish the agents the pilots and the tugs and so forth." Werner also ted out that Flushing, being located further south, d involve less steaming than Rotterdam.

A few days later, Mr. Joyce and Mr. Johnson, sales representatives for Chevron, met with Pagel and:

> "[M]ade a small pitch for us using Flushing so that they would get the business rather than Gulf Oil and the tenor of their pitch was fairly consistent, that if we go to Flushing [they] take care of everything, they said, they take care of the pilots, they take care of the tugs, they take care of the agents and the only thing we would have to do is send an ETA for themselves there in Holland and they acted as agents for us. The suppliers would be some company I believe called SHV or PAM Oil."

Werner testified that he made an offer to Pagel on behalf of Chevron and that, during the negotiations with Pagel, they referred to Chevron's price list for "Marine Marketing," dated October 1, 1969 (PX 2). Werner stated that this document "is sort of our booklet we go by." On page 9 of the booklet, under the column entitled "Remarks," for Flushing appears this language:

> "Following included in the price: Pilotage, harbor dues, clearance, quay hire, mooring, unmooring and ordinary tug assistance if required, provided vessel enters Flushing for purpose of bunkering only and lifts min. 150 tons."

The agreement between Norland and Chevron was finalized on December 8, 1969 and is contained in plaintiffs' Exhibit 1, the "Bunker Confirmation." This document is a Mallory standard form and lists WESTERN EAGLE as the vessel involved, Norland as the buyer and Chevron as the seller of 1,000 tons of bunkers. The "Readiness Date" is listed as "December 12-16, 1969." Chevron is also listed as "Vessel's Agent."

Pagel was aware that the bunkers would be supplied at Flushing by Steenkolen Handelsvereeniging (SHV),[3] a local Dutch firm, but it was always his impression that "Chevron was the person with whom we would have the contract. . . ."

There can be no doubt from the evidence that the contract contained in Exhibit 1 was between Norland, as agent for the owners of the WESTERN EAGLE, and Chevron, as seller of the bunkers. Certainly this was the contemplation of the parties, especially Pagel and Werner, who conducted most of the negotiations. Werner made his offer to Norland on behalf of Chevron, and it was always the parties' understanding that Chevron would be the contracting party. This view is amply supported by Exhibit 1,

which lists Chevron as the seller, as well as by the testimony of Werner and Pagel. Chevron's claim that it acted merely as agent for SHV is not supported by the evidence. Rather, SHV acted as a subcontractor to, or supplier for, Chevron.

Moreover, the contract negotiations reveal that the parties believed the contract included a term requiring Chevron to provide tug assistance and pilotage to the WESTERN EAGLE at Flushing. Not only did Pagel and Werner rely on the Chevron price list, which spelled out the "extras" available at Flushing, but Pagel discussed the pilotage and tug provisions with Chevron's employees[4] and with Werner. In fact, these special provisions were the motivation for the vessel's bunkering at Flushing rather than Rotterdam. Thus, we find that a contract for bunkers existed between plaintiffs, the owners of the WESTERN EAGLE, and Chevron and that the contract required Chevron to provide the WESTERN EAGLE with pilotage and tug assistance at Flushing.

Plaintiffs contend that Chevron's promise to provide tugs contained an implied warranty of workmanlike service and that this warranty was breached by the SHV tugs' "negligent" conduct.

The doctrine of the implied warranty of workmanlike service in maritime contracts originated in the landmark case of Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp., 350 U.S. 124 (1956) (Ryan). There, the Supreme Court sustained a claim for indemnity against a stevedoring firm by a shipowner which had paid a substantial judgment to a longshoreman injured while unloading cargo improperly stowed by the stevedore. The Court reasoned that it was "of the essence of [the] stevedoring contract" that the stowage of cargo be performed competently and safely and likened the stevedore's warranty of workmanlike service "to a manufacturer's warranty of the soundness of its manufactured product." 350 U.S. at 133-34. The Court emphasized that the shipowner's action was in contract, not in tort.

Similar warranties have been implied in other maritime service contracts involving comparable expertise, control and supervision to that of the stevedore in Ryan. Tebbs v. Baker-Whiteley Towing Co., 407 F.2d 1055, 1058 n.1 (4th Cir. 1969); Great American Ins. Co. v. Bureau Veritas, 338 F. Supp. 999, 1014 (S.D.N.Y. 1972). A contract of towage also gives rise to an implied warranty of workmanlike service. Dunbar v. Henry Dubois'

Sons Co., 275 F.2d 304, 306-07 (2d Cir. 1960); James McWilliams Blue Line, Inc. v. Esso Standard Oil Co., 245 F.2d 84, 87 (2d Cir. 1957); Tebbs v. Baker-Whiteley Towing Co., supra, 407 F.2d at 1058-59; A/S Atlantica v. Moran Towing & Transp. Co., 360 F. Supp. 1225, 1227 (S.D.N.Y. 1973); T. J. Stevenson & Co. v. George W. Whiteman Towing, Inc., 331 F. Supp. 1038, 1043 (E.D. La. 1970); Farrell Lines, Inc. v. Birkenstein, 207 F. Supp. 500, 507 (S.D.N.Y. 1962).[5] The shipowner turns his vessel over to the tug's control, depending on the latter's expertise in conducting safe towing operations.

The presence and extent of the warranty and its breach, if any, depends upon the circumstances of the particular case relating to control, supervision and expertise. H & H Ship Service Co. v. Weyerhaeuser Line, 382 F.2d 711, 713 (9th Cir. 1967); Tebbs v. Baker-Whiteley Towing Co., supra, 407 F.2d at 1059. The Supreme Court, in the stevedore cases, established the rule that "liability should fall upon the party best situated to adopt preventive measures and thereby to reduce the likelihood of injury." Italia Societa per Azione di Navigazione v. Oregon Stevedoring Co., 376 U.S. 315, 324 (1964) (Italia)

Thus, the burden should be placed, ultimately, upon the party whose default caused the injury. Reed v. The Yaka, 373 U.S. 410, 414 (1963); Italia, supra, 376 U.S. at 324.

This brings us to the question of control. Chevron claims that the tugs were never in a position of control and that, therefore, no implied warranty of workmanlike service arose. This point is well taken, but this case does not turn on the narrow issue of control. Even if the tugs were not technically "in control," they may still have been the party best situated to prevent the accident, Italia, supra, 376 U.S. at 324, and therefore liable for breach of the warranty of workmanlike service.

We wish to emphasize that this is a case in contract, not tort, Ryan, supra, 350 U.S. at 134, and that non-negligent as well as negligent conduct may breach the warranty. Italia, supra, 376 U.S. at 315.[6] Thus, we must determine which party, if any, was in the best position to prevent the stranding of the WESTERN EAGLE and whose conduct caused the damage to the vessel. We now turn to the events of the stranding.

The WESTERN EAGLE, under the command of its master and a Belgian sea pilot, steamed into the Scheldt

River, heading east for Buitenhaven, the harbor of Flushing, about 3:00 A.M. on December 14, 1969. At 3:45, L. J. Pennarts, an experienced Dutch river pilot, boarded the WESTERN EAGLE, replacing the sea pilot. At that time, the visibility was poor but sufficient to enable Pennarts to see the lights of the pilot station, the tanker BRITISH STATESMAN, which was anchored nearby, and the fog lights of Flushing, one-half mile away. The wind was from the south at a force of 5-6 on the Beaufort scale (19-31 mph). A flood tide, or "run of the tide," was moving upriver, from west to east, at 2 to 2-1/4 mph.

Because the pilot boat was late leaving the pilot station, Pennarts did not board until the WESTERN EAGLE was almost abeam of Buitenhaven, nearly a mile upriver from the pilot station, where he had intended to board. Immediately after boarding, at 3:50 A.M., Pennarts called Flushing radio and announced his intention to take the ship into Buitenhaven. He then ordered the SHV tugs to come out and make fast to the WESTERN EAGLE. The tugs had, until this time, not proceeded out from Buitenhaven because the sea pilot had not ordered them to do so and because their captains thought the WESTERN EAGLE would anchor in Flushing Roads due to the unfavorable weather.

The presence of the anchored tanker, BRITISH STATESMAN, on the south side of the Scheldt, opposite Buitenhaven, prevented Pennarts from making a starboard turn there, thus maneuvering the WESTERN EAGLE's head into the flood current. Therefore, the pilot continued upriver past the tanker, where he attempted to turn the ship to starboard by ordering the engines full speed astern. Since the WESTERN EAGLE has a right-handed screw, this maneuver would normally turn the ship to starboard, but the wind was blowing so powerfully from the south that the ship swung to port from a heading of 90° to one of 60°. Pennarts corrected the ship's course to 95° at 3:58 A.M. by ordering a hard starboard rudder and the engines slow ahead, but this brought the vessel dangerously close to running over Buoy No. 1, located on the south side of the channel. To avoid steaming over the buoy, Pennarts, at 4:05, stopped the ship's engines and then put them full speed astern.

By this time, the SHV tugs SOPHIA and FREDERIK HENDRIK had arrived. Pennarts ordered the tugs to make fast to the WESTERN EAGLE as soon as possible. The FREDERIK HENDRIK was to make fast to the port bow, and the

SOPHIA to the stern of the ship, so that the WESTERN EAGLE could be swung to starboard, with its bow facing south. The SOPHIA, however, instead of going to the vessel's stern, went amidships. The crew of the WESTERN EAGLE threw a heaving line to the FREDERIK HENDRIK, but this tug suddenly moved across the ship's bow to starboard. This sudden movement was caused by the approach of a coaster (a small river and coastal craft) moving downriver from Antwerp. The coaster sounded three short whistle blasts, and the WESTERN EAGLE responded with three short blasts and moved full speed astern. The coaster passed the ship on the port side, between the northern shore and the WESTERN EAGLE. At this point, the WESTERN EAGLE was about 3 to 3-1/2 cables, or 1800 feet, from the northern shore.

A few minutes later, at 4:10, another downriver coaster approached, this time from the starboard side. Pennarts stopped the WESTERN EAGLE'S engines, allowing the coaster to pass on the port side. At the approach of the second coaster, both tugs moved away from the ship, apparently fearful of a collision with the coaster. The crew of the FREDERIK HENDRIK unfastened a line connecting her aft to the WESTERN EAGLE'S starboard bow, and

the tug moved away.

Abandoned by the tugs, the WESTERN EAGLE was unable to combat the effect of the strong wind and the flood tide which were pushing the ship in a northeasterly direction, at a heading of 45°, towards the northern shore of the Scheldt. The SOPHIA and FREDERIK HENDRIK were now near the ship, but in the wrong position to make fast or otherwise render any assistance to her. Pennarts attempted to prevent the vessel from stranding, at 4:12, by ordering a hard starboard rudder with engines full ahead, but this maneuver was in vain and the vessel continued to drift towards the northern shore. At 4:13, Pennarts tried to soften the impact of the imminent grounding by putting the engines full speed astern, but the vessel was unable to make any sternway, and the ship ran aground on the dike at 4:15, about two cables to the west of Schone Waardin light, on the northern shore of the Scheldt River.

The SOPHIA and FREDERIK HENDRIK were then joined by a third SHV tug, but together they were unable to pull the WESTERN EAGLE off the shore. Later that day, at high tide, the vessel was refloated by tugs furnished by a

salvor pursuant to a Lloyd's salvage agreement. The WESTERN EAGLE was then towed to drydock, where it was discovered that she had suffered extensive damage.

The evidence shows that the stranding of the WESTERN EAGLE was caused by the inadequate assistance rendered to her by the SHV tugs. The tugs not only appeared late (after the ship was well east of Buitenhaven) but, after meeting the ship, failed to make fast and provide any assistance to the WESTERN EAGLE as she drifted towards the northern shore.

Pennarts, who was in the best position to observe the danger to the ship, testified that he was depending upon the tugs to make fast and aid the ship in making a starboard turn to stem the tide. He stated that if the tugs had made fast, "I was out of the trouble." He also said that if no tugs had been available, he would have sailed up the Scheldt to No. 5 buoy and turned the ship there. In his written statement (DX A), Pennarts cited the late arrival of the tugs, along with the speed of the vessel when he boarded and his late boarding of the WESTERN EAGLE, as one of the causes of the stranding.

Thus, Pennarts depended on the SHV tugs to help the WESTERN EAGLE combat the force of the southerly wind and the flood tide, and his decision to turn the ship just after No. 1 buoy was based on his assumption that the tugs would make fast and assist the ship. The evidence shows that the WESTERN EAGLE was unable, by the force of her own engines, to make progress against the wind and the tide. Only with the aid of the tugs could the vessel have avoided grounding.

Schuiling, the captain of the SOPHIA, testified that the tugs' normal practice was to meet ships over a mile to the west of Buitenhaven. He stated that due to the flood tide, it was especially important that the tugs meet the ship before she reached the entrance to Buitenhaven because it was easier to maneuver downriver. Although Schuiling heard the sea pilot ask by radio for a river pilot and knew that the WESTERN EAGLE was bound for Buitenhaven to bunker and that she required tug assistance, he assumed that because the weather was bad the vessel would anchor in Flushing Roads. Therefore, the SOPHIA and the FREDERIK HENDRIK did not come out into the Scheldt until ordered to do so by Pennarts. The late arrival of

the tugs meant that the WESTERN EAGLE moved far upriver from the safest and easiest place for the ship to maneuver and this limited the effectiveness of the tugs' assistance to the WESTERN EAGLE.

Despite the tugs' late arrival, however, we believe the accident could have been avoided if the tugs had made fast to the WESTERN EAGLE and assisted her in turning. Unfortunately, the tugs disobeyed the orders of Pennarts to make fast to the ship and thus abandoned her to the mercy of the wind and the tide. Apparently, the tugs feared a collision with the coasters, which arrived on the scene as they were about to make fast. The testimony and written statements of Pennarts, however, who had the best vantage point to judge the situation, fail to show that he believed there was any danger that the tugs and coasters would collide. Rather, there was ample room between the WESTERN EAGLE and the northern shore for the coasters to pass, as they did, without incident. Both Captains Schuiling and Bout (captain of the FREDERIK HENDRIK), acknowledged that they had received Pennarts' order to make fast and were in position to do so when they left the ship. In fact, the crew of the FREDERIK HENDRIK unfastened a line from the WESTERN EAGLE which had been attached to the tug.

The tugs' duty to perform under the contract included the obligation to carry out, if possible, all orders given them by the pilot during the performance of their duties. Lykes Bros. S.S. Co. v. The A. W. Whiteman, 138 F. Supp. 725, 727 (E.D. La. 1956); Rawls Bros. Contractors, Inc. v. United States, 251 F. Supp. 47, 52 (M.D. Fla. 1966). This the tugs failed to do.

Moreover, the evidence shows that the tugs, and only the tugs, could have prevented the stranding. The WESTERN EAGLE was dependent on the tugs' expertise to prevent her from drifting towards the northern shore, since her engines were unable to move the ship against the force of the wind and tide. Applying the standard laid down by the Supreme Court in Italia and Reed, (1) the tugs were in the best position to adopt measures to prevent the accident, but did not, 376 U.S. at 324, and (2) the tugs caused the accident, 373 U.S. at 414, and thus failed to fulfill their warranty of workmanlike service.

Since Chevron is responsible under its contract with plaintiffs for the performance rendered by its subcontractor or agent, SHV, Todd Shipyards Corp. v. Moran

Towing & Transp. Co., 140 F. Supp. 107, 110 (E.D.N.Y. 1956), aff'd, 247 F.2d 626 (2d Cir. 1957), the conduct of the SHV tugs constituted a breach of Chevron's implied warranty of workmanlike service.

Chevron, however, seeks to place the blame for the accident on plaintiffs, citing as causes of the accident (1) the failure of the WESTERN EAGLE'S master to anchor his ship in Flushing Roads and (2) the unseaworthiness of the WESTERN EAGLE.

Before considering any alleged "fault" of the WESTERN EAGLE'S owners, we note that where a party has failed to fulfill its duty under a warranty of workmanlike service, mere concurrent fault of the shipowner will not excuse the breach of warranty. To be relieved of its breach, defendant must show that the conduct of the shipowner prevented or seriously handicapped the tugs in their attempt to perform in a workmanlike manner. Albanese v. N. V. Nederl. Amerik Stoomv. Maats., 346 F.2d 481, 484 (2d Cir. 1965); Misurella v. Isthmian Lines, Inc., 328 F.2d 40, 41 (2d Cir. 1964).

Defendant's expert testified that because of the dense fog conditions, the WESTERN EAGLE should have

anchored in Flushing Roads. He explained that there was no traffic control at Flushing and that it was very easy for a ship to collide with the port facilities and jetties. Therefore, he said, "any ship of a size over 1000 tons will definitely come at anchor in dense fog and will not try to enter Flushing Harbor."

The problem with this theory is that the evidence does not show that dense fog conditions prevailed. Pennarts' testimony was that when he boarded he could see lights on shore, over half a mile away. Visibility on land was poor and visibility on the Scheldt deteriorated as the WESTERN EAGLE moved upriver, but it appears that the fog was scattered, heavy in some places but very light in others. Defendant failed to produce any evidence showing that Pennarts' estimate of the visibility on the Scheldt at the time he boarded the WESTERN EAGLE was inaccurate. Tjeed, defendant's expert, testified that if the pilot could see shore lights, "so we have a visibility of half a mile, I think he is entitled to proceed." We find that dense fog conditions were not present, and, therefore, the WESTERN EAGLE need not have anchored in Flushing Roads.[7]

Defendant also claims that the WESTERN EAGLE was unseaworthy and that, therefore, plaintiffs' recovery is barred. Specifically, Chevron claims that the WESTERN EAGLE was unseaworthy because (1) her radar was not working properly and (2) the ship was improperly trimmed, being 8 feet light at the bow. We reject both allegations of unseaworthiness.

Defendant contends that the radar of the WESTERN EAGLE was cluttered and that the faulty radar, combined with the inattentiveness of the master and crew, led to the near collision of the SHV tugs with the downriver coasters and the subsequent stranding of the vessel. This theory is not supported by the evidence. Pennarts testified that he was able to read the radar and that the clutter presented no problems in maneuvering the vessel. And both the pilot and Captain Schuiling observed the coasters on their radar minutes before they arrived. Thus, the approach of the coasters came as no surprise to either the tugs or the WESTERN EAGLE, and the radar clutter played no part in the stranding.

Chevron also contends that the WESTERN EAGLE was improperly trimmed and that this caused her to follow

the wind, swinging her bow to port when her engines were full astern. Pennarts found nothing unusual about the vessel's trim, however, and defendant's expert stated that a ship might well act unpredictably, as the WESTERN EAGLE did, in a strong wind. We think it obvious that a wind of force 5-6 on the Beaufort scale would have interfered with the navigation of any vessel, whether trimmed properly or improperly. In addition, defendant has failed to show by any convincing evidence that the trim of the WESTERN EAGLE, rather than the failure of the SHV tugs to assist her, led to the stranding.

In short, defendant has utterly failed to demonstrate that the condition of the WESTERN EAGLE, or any conduct by her master or crew, hindered or prevented the tugs from performing in a workmanlike manner.

Accordingly, we find defendant is liable to plaintiffs for breach of its warranty of workmanlike service and for any foreseeable damages suffered by the WESTERN EAGLE caused by that breach. A Special Master will be appointed, pursuant to Rule 53(a), Fed.R.Civ.P., to determine damages. The parties are directed to submit an order, not inconsistent with this opinion, within

ten (10) days. The foregoing constitutes this court's findings of fact and conclusions of law, as required by Rule 52(a), Fed.R.Civ.P.

So ordered.

Dated: New York, N. Y.
March 8, 1974

Lloyd F. MacMahon
LLOYD F. MacMAHON
United States District Judge

Fairmont Shipping Corp. v. Chevron Int'l Oil Co.

70 Civ. 3382-LFM

FOOTNOTES

1

"Bunkers" are fuel oil.

2

A "stem" is a contract for bunkers.

3

SHV is listed on page 4 of the price list as the supplying company at Flushing.

4

Defendant failed to produce either of these Chevron representatives at trial to dispute Pagel's testimony.

5

See also, Singer v. Dorr, 272 F. Supp. 931, 934-35 (E.D. La. 1967); United States v. Tug Manzanillo, 310 F.2d 220, 222 (9th Cir. 1962). This line of cases has been criticized in A. L. Parks, Law of Tug, Tow and Pilotage (1971), at 13, 500-01.

6

This disposes of Chevron's contention that misfeasance, not nonfeasance, is required to breach the warranty. Italia was a classic case of nonfeasance, i.e., a failure to discover defective equipment. 376 U.S. at 321.

7

Our finding that dense fog conditions were not present similarly disposes of Chevron's contention that the WESTERN EAGLE was derelict in not sounding proper fog signals.

Interlocutory Order

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FAIRMONT SHIPPING CORP. and FAIRWINDS OCEAN CARRIERS CORP., Owners of the Steamship WESTERN EAGLE, Plaintiffs,	70 Civ. 3382 (LFM)
- against -	INTERLOCUTORY DECREE
CHEVRON INTERNATIONAL OIL COMPANY, INC., Defendant.	

The above entitled suits in admiralty having come on to be heard before the Honorable Lloyd F. MacMahon, United States District Judge, on the pleadings and proofs adduced by the respective parties on October 29, 1973, and having been submitted, and the Court, after due deliberation, having filed its opinion in writing on March 11, 1974 finding Chevron International Oil Company, Inc. solely liable for the stranding of the S.S. WESTERN EAGLE at Flushing, Holland on November 14, 1969 and for the resultant damages and directing entry of an interlocutory decree in favor of plaintiffs Fairmont Shipping Corp. and Fairwinds Ocean Carriers Corp. against the defendant Chevron International Company, Inc.

Now, on motion of Burlingham Underwood & Lord, attorneys for plaintiffs Fairmont Shipping Corp. and Fairwinds Ocean Carriers, Corp. it is

ORDERED, ADJUDGED AND DECREED that the plaintiffs recover of and from the defendant Chevron International Oil Company, Inc. the damages sustained by plaintiffs by reason

of the matters set forth in the complaints together with interest from December 14, 1969 and with costs to plaintiff, and it is further

ORDERED that the parties are hereby given (30) days from the date of entry of this decree to agree upon the damages properly to be awarded or, failing such agreement, that issue will be referred to a Special Master for determination.

Dated: New York, New York - in said Southern District, this 21st day of March, 1974

Lloyd F MacMahon
U.S.D.J.
Lloyd F. MacMahon
US District Judge

X THIS ORDER SIGNED

Service of ~~three~~ Two 2 (2) copies of the within Joint Appendix
is admitted this 24th day of June 1974

Burlingham Underwood Lord

Pl.

Plaintiffs-Appellees